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IMPEACHMENT INQUIRY

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE
COMMITTEE ON THE JUDICIARY TO INVESTIGATE
WHETHER SUFFICIENT GROUNDS EXIST FOR THE
HOUSE OF REPRESENTATIVES TO EXERCISE ITS
CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON
PRESIDENT OF THE UNITED STATES OF AMERICA

Book II

MAY 16-JUNE 19, 1974



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(III)

IMPEACHMENT INQUIRY

Executive Session

THURSDAY, MAY 16, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:09 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Robert A. Shelton, associate special counsel; Thomas Bell, counsel; Michael M. Conway, counsel; Evan A. Davis, counsel; Ben A. Wallis, Jr., counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, inasmuch as somebody is apparently leaking to the press almost every single item we discussed yesterday, I wonder if we should not consider going public?

The CHAIRMAN. Well, I would like to respond by stating that the Chair has already indicated that we would be considering going public, but in this phase we will have to do as much as we possibly can to keep the materials confidential and I think that under the rules and under the representations that we have made to various sources, I think that we can do no less now than to try to adhere to those rules.

Mr. DENNIS. Would the gentleman yield?

Mr. RAILSBACK. I will be glad to yield in just a moment. Let me just say that I think it is extremely unfair to use the news media and I have had complaints and when I have been asked to make a statement I think most of us, probably 99 percent of us have said we are

not going to discuss the evidence. And I think it is extremely unfair to the rest of the press that when the Washington Post comes out with—somebody must have had earphones on that were attached directly to the Washington Post. I just think it is very unfair, Mr. Chairman. I have talked to other members, both Democrats and Republicans, that agree, and I yield to my friend from Indiana.

Mr. DENNIS. I thank the gentleman from Illinois for yielding. That is a very important point I would like to make here, Mr. Chairman. The matter that was leaked yesterday may not be very important. But, if everybody is going to leak everything that his particular personal conscience acquits him of, and he thinks it is all right in this case, we are going to get in a lot of trouble and we had better just go public because these tapes have got lots of things on them that are not relevant to this inquiry at all.

Now, somebody is going to find something, let us say, about the Middle East that appeals to his conscience, and thinks it ought to be in the paper, or maybe China or Russia or something else. Are we going to expect that whatever we get here is on the front page? I hear talk here inferring things about the President because he does not want to give up these tapes. Every once in a while I get halfway convinced, but this kind of thing proves to me that he may have doggone good reasons, with things that have nothing to do with our inquiry, for not giving up these tapes, because he knows any time he does somebody is going to leak anything out that he happens to think ought to go in the press.

Now, I think it is a very serious problem.

Mr. BROOKS. Would the gentleman yield?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I think it is an unfortunate thing that any of this was leaked. But, I would say that eventually, in candidness, all of the relevant, necessary material that we feel is justified for any further action would have to be released at a later date. We concede that. I think that the release of any tapes to the committee would be under the rules of confidentiality, which would not give all of us irrelevant or damaging material on other subjects. I think that Mr. Hutchinson, our chairman, their counsel, would not edit, but would certainly excise from those tapes the matter which would be damaging or would be irrelevant, purely and obviously irrelevant to this inquiry. And so I think that the President would be protected to that extent and we would not be turning those raw tapes over to the members of this committee, who, with all due respect, might inadvertently release them.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I think that the matters that were included on the tapes were, in fact, relevant, and I presume that someone on this committee, either the chairman and the ranking minority member, or the staff, made a preliminary assessment that those matters were relevant. And I believe they absolutely were in terms of the modus operandi and should have been considered by the committee. I would think that what we might consider, at least as a middle ground, that we release our transcripts of every tape that the President has released.

The President has already breached confidentiality when he released all of the tapes, so there is no reason for us to keep our tapes under the rule of confidentiality when they differ from the President's tapes in material ways. I think the public is entitled to know that and I would hope that if we do not go open, which I think we should, that we, at least, we release those tapes and those transcripts in the areas in which they differ from those that the President has released.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I think that it was most unfortunate on the part of the President, and on the part of the White House, to release to the public the transcripts of the tapes which we requested and which we requested under our rules of confidentiality. And I only want to say this, that if there is a disposition to deliver any future tapes or transcripts of tapes, which I hope there will be, that these will be released to the committee under our rules of confidentiality and not put in the public domain.

I think the greatest damage has been done by the wholesale release of the 1,308 pages of transcripts, much more than the sort of incidental things that were included yesterday which I do not think add or subtract one iota from the transcripts that we have previously received.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. As the chairman knows, I have been one of those who have been pressing for an early release of the materials that we have been considering. But I hope, and I would like to point out, that the release was made to the Post yesterday, while it was a limited release, and one that only expanded a transcript that the President had already released, but I would hope that my colleagues—and I am sure it was a member of the committee and not the staff, because the timing was such that it only occurred after the committee had the tapes—I would hope that our colleagues would bear in mind that if we have any significant breach of our rule of confidentiality that we are just handing the President another argument as to why he should not release materials that we have subpoenaed. And I would hope that we would all exercise restraint, if only for the practical reasons.

But, I would hope also, Mr. Chairman, that we make an early decision to release all of the materials except those we clearly decide should remain confidential, that we have considered thus far.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Well, Mr. Chairman, I do not think that we can realistically absolve any possibility of this leak coming from staff when one of the syndicated columnists is openly boasting that he has a source on the investigation staff with whom he has checked and re-checked. For example, the stories that were being floated about anti-Semitic references that appeared today in either the Post or Times, that he has checked with his source on the staff.

Now, this matter of confidentiality was a very basic thing, which it seemed to me every member of the committee and every member of the staff was solemnly pledged to in setting up these ground rules and I do not think that we should admit that we are incapable of enforcing

those rules or trying to stop this outrageous, disgraceful breach, not only of confidence but of, it seems to me, our very solemn undertaking as to how these hearings were to proceed.

It is not a light matter, not something to try to foist off by saying that well, the President has not been blameless in this. We have our own responsibility to the House and to the American people, and obviously we're not maintaining confidentiality at all, based on the outrageous leaks of the last few days.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I would join in the expression of concern over the leaks that are occurring, although I do not suppose we want a special unit to locate them. But, the breach of confidentiality on the part of one person I do not think relieves the rest of us of our responsibility to try to protect the individuals. I too, lament the fact that the President released this. I think there are some things in there that are damaging to people that probably are not even concerned with this.

I think whoever is doing it, the newspaper men seem to know that there are two sieves somewhere in the committee and I do not know. Maybe I am unwittingly one. I hope not. But, I say it will be known sometime and it is certainly lamentable, because I think the work of this committee to this time in its bipartisan approach and its objectivity and an attempt to work as a unit, can be destroyed by this sort of thing. And I think so far the action of this committee has raised the standing of the committee and has raised the standing of the Congress. And whoever is leaking, I hope they will consider it, reconsider it seriously.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

I simply want to make this observation. Every one of us are lawyers. And in the practice of law every one of us knows how to keep things confidential, and I cannot understand why it is that we cannot proceed here in a professional way and as lawyers. We know how to keep things confidential and I think every member of the committee should consider that he is acting professionally in this regard and to respect the principles of his profession with regard to confidentiality.

The CHAIRMAN. The Chair would like to state that certainly we will take under advisement all of the suggestions that have been made and we will consider this and discuss with counsel as well some of the problems that I think we are going to be involved in should we go public since there are issues and questions that I think are going to deeply affect due process of individuals and the rights of individuals. And I think before we go off post haste and make any rash judgment because of the unfortunate leaks, which are deplorable, that we ought to seriously consider the steps which we will take from here on in.

But, the Chair will discuss this with counsel and with the ranking Republican member and I think come back and see what the committee is disposed to do.

But, I would. I would hope, and I would urge very seriously that notwithstanding this leak. I think that there are ways that we can sort of plug the holes, and if each member feels so concerned and so

anxious to insure against leaks, we could relinquish the books at the end of the evening, and the transcripts and leave them with the security where they have been up until now, and no leaks had occurred, and this is notwithstanding the fact that Mr. Hutchinson and myself, and Mr. Jenner and Mr. Doar, have been privy to all of these conversations. And not reflecting on anyone, at no time prior to this has anything ever leaked out. So, it seems to me that if we were to leave these books, these transcripts under the security under which they have been, the members are given a presentation, and I think they are given ample opportunity, if they want to review the materials, that have been presented, in a summary fashion, and I think it would help a great deal. I think we would have to weigh the inconveniences we are going to suffer against the wrongs we are going to do and the injustices that we might unfortunately I think bring about.

But, that is a matter for the committee. I know that I am seriously distressed over what has taken place.

Mr. LATTA. Mr. Chairman?

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. On another issue, I am concerned about getting through all of this material as well, and I would wonder if the committee, the Chair could possibly keep us in session and so we could make a statement, during quorum calls, for example, when we have been breaking and when the bells are ringing and I would just like to know if we could act as a committee so that we do not feel compelled to go over and answer these quorums and make these statements back to our districts about the fact that it will affect our attendance record or whatever. I would like if we could possibly have some unanimity among the committee members.

The CHAIRMAN. I do not think there is an objection. All we need to do to keep on with the hearing is have a quorum of 10. Some of us may stay on, if there is no objection on the part of the members. Of course some of the members will feel that they are going to be missing—

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I am sorry, I did not understand. I must have misunderstood your suggestion.

Mr. COHEN. All I was suggesting is we stay, we continue in session even though there is a quorum call on. So, if we could either get something by way of the Speaker or some sort of an announcement that we are present, we're conducting business but we do not have to keep interrupting by going over there.

Mr. DENNIS. Mr. Chairman?

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I would like to join Mr. Cohen's suggestion. I think it is just a charade for us to be running over to the floor and indicating our presence and then running back here. If somehow or other the congressional record could reflect the fact that we are here so that there would be some official record that we are not out in California or someplace.

Mr. BROOKS. Would the gentleman yield?

Mr. DANIELSON. It might save a lot of time.

Mr. BROOKS. Would the gentleman yield?

Mr. DANIELSON. Oh yes, I yield.

Mr. BROOKS. I am afraid that there is no way. It makes sense, it is practical, we can justify it in this instance. The public would understand it. The Congress would understand it. But, the rules do not permit in any way an absolution from being there. We cannot beat that rap. And I realize the quorum calls probably should be amended, and the rules that the House is considering may ultimately change that requirement for quorums.

Mr. COHEN. I am not suggesting we change the rules but simply that we act as a body and stay here and not break up with people going in and out.

Mr. BROOKS. I understand. But, they will never allow that.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. I am afraid we have been reading our own press clippings. You know, there are other committees in the Congress too that consider their work important. We are not the only committee in the Congress and we are not the only one that has important business. This is of course the most important but I just cannot think we are entitled to any special treatment on this and it would be downright foolish for us to ask for it.

The CHAIRMAN. I am sure that there could be no modification of the rules, nor could the Speaker absolve us in any way. I think we would have to proceed, and every individual member would have to make a judgment as to whether he wants to attend the quorum call or not.

Mr. EDWARDS. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Why don't we conclude at 10:30 since there is a great, great deal of material that has to be presented. And I anticipate that we are going to be working rather late this evening.

Mr. EDWARDS. Mr. Chairman, may I make an observation?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Is it not true that at the end of every day such as today, where we have executive sessions, that the Chairman, Mr. Doar, Mr. Jenner and Mr. Hutchinson have a news conference in which an attempt, in good faith, is made to release to the public as much information as is appropriate? Is that not correct?

The CHAIRMAN. That is correct.

Mr. EDWARDS. Well, I think that is a very good excuse for all of the members to remember that that is sort of an official release that is given on behalf of all of us and so when members are besieged by the media, it is a very excellent way out.

The CHAIRMAN. The Chair, as a matter of fact, has been endeavoring now to try to summarize as well as we can the presentation to the media and the press after the day's hearings have been concluded what was presented, what we can possibly present, and the Chair has been endeavoring to get that material ready so that each individual member would also have an opportunity to know what the summary is all about, even before it is made public.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman. I am glad to hear you say that you are

going to take this matter of going public under advisement. And while you are thinking about it, I would wish that you would think about separating the grand jury testimony from the testimony that was given to the Senate that is already public. Certainly we could go public here on matters about oh, I would say about 75 or 80 percent of everything that we have heard to date and I think that we would be doing the public a service and ourselves a service so that they would not think that we are coming into something new every day here, when we are just having a relash of what was or already has been before the public in the Senate.

So, I think that you could make, when you are pondering this matter, you could make a good decision about saying we are going to go public on the matters that have already been public, and that would take care of about 80 percent of it.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, you made one suggestion a moment ago which I hope we will give a lot of thought to before we adopt it. That is this idea of adopting a rule that we have to leave these books here. Now, I will obey any rule we adopt, but there is a lot of material to go over here. I like to study it and I am sure that other members do. And personally, I think it would be an awful concession of failure here to suggest that because somebody on this committee just cannot avoid talking to newspapermen about everything he reads that nobody else on the committee can be allowed to study his work. I hope that we will not be reduced to that.

The CHAIRMAN. Well, the chair merely made a suggestion, made two suggestions in that direction. One, that we leave the books and the transcripts and the other that we leave the transcripts.

Now, there are going to be a number of tapes which will be listened to and there will be transcripts that will accompany the listening of those tapes. And I think that would certainly be a simple way too, because that material is the material that I supposed is of greatest interest. But nonetheless, as I stated before, there are matters that I think are going to create some problems, and I think we have an obligation to the court, we have an obligation to the committees of the Congress that have developed a great deal of this information in executive session, which they have not seen fit by committee vote to yet make public, and these are matters I think that we would have to take up with those principals before we make any decision.

Now, the Chair will, however, discuss this and seriously consider it and I hope that from now on we can go forward. And the Chair will make some announcement as to what we propose to consider regarding this matter. Mr. Doar.

Mr. DOAR. Mr. Chairman, members of the committee, if you will look at paragraph 53.2¹ for reference, 53.2, this is a retyped portion of the contemporaneous notes that Mr. Haldeman made of the September 15, 1972 meeting with John Dean and President Nixon between 5:27 and 6:17 p.m.

Mr. DANIELSON. Mr. Chairman, my book does not contain a 53.2. I have got the dividers here. I can look at Mr. Seiberling's.

¹ NOTE.—The tab numbers cited throughout the three volumes of executive sessions refer to paragraphs in previously printed publications of the Committee on the Judiciary entitled "Statement of Information" consisting of 12 books containing 21 separate volumes and "Statement of Information Submitted on Behalf of President Nixon", 4 books, all released by the Committee on the Judiciary during July and August, 1974.

Mr. DOAR. And 53.3 are retyped notes that Mr. Haldeman made of the September 15 conversation when he listened, according to his testimony, before the grand jury, to this tape around at some time between July 10 and July 12, 1973, in preparation for his testimony before the Senate select committee.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. As I recall the tape, and on the notes, there is a reference to a little red box, and I do not have a sufficient understanding of the facts to give any meaning to it. Can you explain that?

Mr. DOAR. I do not know that I can give it any meaning either. I inquired of the staff last night. Evan Davis perhaps can tell you just all we know about it, and it is not very much.

Mr. DAVIS. All we know is based on newspaper reports at the time. We have not been able to check them out. But, apparently it was a device made to look like a smoke detector device that could be used to transmit conversations. It was a mechanical device for transmitting conversations made to look like a fire, smoke detector device.

Mr. DENNIS. Mr. Chairman, along that same line——

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. The testimony is "she delivered it to Edward Bennett Williams." Who does the "she" refer to there? Does anyone know?

Mr. DAVIS. We are not sure, no. It may be Mrs. Hunt.

Mr. DENNIS. Thank you.

Mr. BUTLER. On page 16 of the transcript there is a reference to the telephone conversation and the word "Henry" indicates that he is talking to a person named "Henry." I didn't hear that "Henry" too clearly, it went by so fast. Have we verified that? The reason I ask is because the transcript given us by the White House indicates that this telephone conversation was with John Mitchell.

The CHAIRMAN. Mr. Butler is addressing the counsel.

Mr. DOAR. Mr. Butler, that word was "anyway" if I heard it correctly, rather than "Henry".

Mr. BUTLER. Well, that helps. I don't want to tie up the proceedings but I would appreciate it if counsel would let us know a little more about it, because I think it is important.

The CHAIRMAN. Page 16 of the transcript.

Mr. BUTLER. Of the transcript presented to us yesterday.

The CHAIRMAN. Of the recording, the September 15, transcript.

Mr. BUTLER. The reason I am inquiring, Mr. Chairman, is that the transcript that the White House has given us says this is a conversation with John Mitchell.

Mr. COHEN. The White House transcript says John Mitchell.

Mr. BUTLER. The White House transcript says John Mitchell. The President was interrupted and asked was he ready for a conversation.

Mr. COHEN. The White House transcript says John Mitchell. Our transcript says Clark MacGregor, and we have the name "Henry".

The CHAIRMAN. Why doesn't counsel attend to this problem and come back with what they find later on.

Mr. BUTLER. That would be my request, Mr. Chairman.

Mr. DOAR. We will do that, Mr. Chairman. Tab 54.

Mr. DAVIS. Tab 54, on October 5, 1972, the President had a press conference. He stated that the FBI had conducted an intensive investi-

gation of the Watergate because "I wanted to be sure that no member of the White House Staff and no man or woman in a position of major responsibility in the Committee for Re-Election had anything to do with this kind of reprehensible activity."

Mr. DOAR. In connection with the President's public statements, we are going to put together an appendix of all of the statements arranged chronologically for the members of the committee as another aid to its deliberations in this case. I expect we would have that to you early next week. Tab number 55.

Mr. DAVIS. Tab 55, on December 15, 1972, John Ehrlichman met with CIA Director Richard Helms, William Colby of the CIA and John Dean. They discussed answers to questions posed by the Assistant Attorney General, Henry Petersen, and Assistant U.S. Attorney, Earl Silbert. Colby had disclosed on November 27, 1972, to the Federal prosecutors that Ehrlichman was the person who had requested CIA assistance for Howard Hunt in 1971. They also discussed the materials turned over by the CIA to the Justice Department on October 25, 1972, which included copies of photographs Mr. Hunt had taken of the offices of Dr. Ellsberg's psychiatrist, Dr. Fielding; and Gordon Liddy in front of a stationery store near Dr. Fielding's office and of a parking space marked "Reserved for Dr. Fielding".

Mr. DOAR. Referring first to 55.4, which is Henry Petersen's testimony, at page 362 Mr. Petersen testifies that as a result of questions generated by Mr. Silbert he had made inquiries of the CIA with respect to activities of Howard Hunt in the summer of 1971. And as a result of this, Mr. Helms, the Director of the CIA, in October of that year, came to the Department of Justice and turned over this packet of photographs and other documents with respect to the Fielding break-in.

The CIA's concern was that they had been furnished to the CIA and there was one possibly wholly unrelated valid CIA activity involved which they were most desirous of protecting and they asked Mr. Petersen if he would make every attempt to secure the documents from public disclosure.

Mr. Petersen examined the documents along with Mr. Silbert and he says at the end of that long answer in the middle of page 2622 "We studied those photographs and we couldn't make any sense of them at all."

Then if you look at 3623 he says "We didn't relate those documents to the Ellsberg case until the time of the Krogh affidavit in connection with the Ellsberg matter."

In other words, the CIA turned over these documents they had to the Criminal Division in connection with inquiries that were being forwarded by the U.S. Attorney who was investigating and prosecuting the Watergate break-in. And at the same time that this occurred, the Internal Security Division of the Department of Justice was investigating and prosecuting Daniel Ellsberg. And the documents, the men in the Criminal Division that looked at the documents, according to their testimony, did not have any idea in any way that they related to anything connected with the Daniel Ellsberg case. And so Mr. Petersen concluded that they did not have anything to do with the Watergate break-in, and he just put them in the file.

Now, this statement of information relates to the 15th of December, as you will see from 55.1, a Friday, December 15. Richard Helms, William Colby, and John Dean came to Mr. Ehrlichman's office in the White House and discussed answers to questions posed by Assistant Attorney General Henry Petersen and Assistant U.S. Attorney Earl Silbert. Apparently Mr. Silbert was still pressing to try to get answers to some of the activities that Howard Hunt and Gordon Liddy had engaged in. And Mr. Colby had disclosed on November 27 in answers to questions, that Mr. Ehrlichman was the person who had requested CIA assistance for Howard Hunt in 1971.

Tab 55.2 is Mr. Colby's testimony before the Armed Services Committee, and in which his nomination to be Director of the Central Intelligence Agency was being considered. And if you look at the second page of the retyped portion where it says No. 2, Mr. Colby is testifying that at this meeting, November 27, they were asked about this "duly authorized extra agency request." And Mr. Colby said he had danced around the room several times, for 10 minutes, to try to avoid becoming specific on this, but finally he named the White House, and then was pinned by Silbert for a demand for the name, and at which point the name of the individual was given. Now, that means that they gave Mr. Ehrlichman's name. And the details of the information were furnished to Mr. Ehrlichman, and also prior thereto furnished to the Department of Justice attorneys.

He then relates a conversation with Mr. Ehrlichman on the 15th of December, and this is in paragraph 3. If you go down to just the end of paragraph 3, you will see that Mr. Ehrlichman took down the dates of the two alleged phone calls, and he said he would check up on his schedule. Mr. Ehrlichman said that Hunt at that time was not working for him, but for Colson, and he had not joined Ehrlichman's staff until later. And he thought that Hunt had been working on the tracing of the document leaks during that period.

Just as a matter of information, on the next page, in paragraph 6, that deletion is a CIA deletion. We do not know what the deletion is or do we know how many words or sentences were deleted. It is not a deletion by your staff.

Mr. DANIELSON. Where is the deletion?

Mr. DOAR. The deletion, if you look right at the top right——

Mr. JENNER. Second line from the top.

Mr. DOAR. They are discussing Howard Hunt. Tab 55.3——

Mr. OWENS. Did you ask the CIA what was deleted?

Mr. DOAR. I do not believe we did. We had an understanding with the CIA that we could ask for material, information about deletions. They did not give it, and I do not believe we asked for that. We can ask for it and we will.

Then if you see——

Mr. SEIBERLING. Mr. Chairman, it is not clear to me what the source, what the nature of this 55.2 is? Is this the document that was a memorandum of an interview by the staff of the Senate committee, or just what is the nature of this document?

The CHAIRMAN. It is a hearing before the Senate committee, the Armed Services Committee, on the nomination of William Colby.

Mr. SEIBERLING. But is this a stenographic transcript? It does not appear to be.

Mr. DOAR. No. What it is, Mr. Seiberling, is it is a portion of the stenographic transcript, and it is a document that is filed in connection with Mr. Colby's testimony which sets forth the questions that the Department of Justice put to the CIA and their answers. And then the memorandum of the meeting on December 15. It is just a portion of it. It is an exhibit to his testimony.

Mr. SEIBERLING. I see.

Mr. DOAR. Tab 55.3 is Mr. Colby's testimony in which he relates on page 110 that they went to see Mr. Ehrlichman and recounted the material that had been forwarded to the Justice Department, and mentioned that they told them. "We told them that we thought that the name was Ehrlichman, that had made the original call."

Mr. Jenner calls to my attention the fact that this entire hearing was a secret hearing by the Senate Armed Services Committee.

Congressman, Chairman Rodino has written letters to each one of the chairmen of the committees advising them with respect to the fact that some of this material that they furnished to us would be presented to the committee, and we have made contact with the staff counsel, the chief counsel of the committee, and so that we would be in a position to advise the committee as to what material they consider to be extremely sensitive if this committee were to make a decision or wanted to know an answer as to confidentiality.

Tab 56, and there is a typo on the first line of tab 56. The date is 1973.

Mr. DAVIS. Tab 56, on January 8, 1973, former CIA Deputy Director Cushman sent a memorandum to John Ehrlichman identifying as the person who requested CIA assistance for Howard Hunt in 1971 as one of the following: Ehrlichman, Charles Colson, or John Dean. On January 10, 1973, after discussions with Ehrlichman and Dean, Cushman changed the memorandum to state that he did not recall the identity of the White House person who requested assistance for Hunt.

Mr. DOAR. You will remember earlier that we brought to your attention a transcript, a tape recording really, of a conversation between Mr. Ehrlichman and Mr. Cushman with respect to providing assistance to Howard Hunt in the summer of 1971. And if you will look at paragraph 56.5, this transcript of a tape recording is set forth behind the affidavit on 56.5, and it is a recording, or it is a transcript made by the CIA in the ordinary course of business of certain conversations that the Director or the Deputy Directors of the CIA would make with some individuals with whom they talked. This happened to be a—this system has since been, I understand, discontinued. At any rate, this transcript of a tape recording of that conversation would appear to be the best evidence of who made the call about Howard Hunt. However, when the gentleman from the CIA visited the White House in January, December 1972, and January 1973, this transcript was in the bottom of a file drawer over in the CIA. General Cushman had left, and General Walters, I believe, was there, or maybe Mr. Colby. Mr. Helms had left. And as you will see from the affidavit, this transcript was not found until February 1974 when Mr. Colby caused a second or third search to be made to see if any, there were any further transcripts of contemporaneously made tape recordings.

Now, the testimony of John Dean is at 56.1 which was after General Cushman had advised that the request for assistance for Howard Hunt had come from John Ehrlichman. Mr. Ehrlichman denied that he had ever made the request, and then General Cushman prepared a memorandum that indicated that requests had come from either Ehrlichman, Colson, or Dean. And Mr. Dean testified that he had never spoken to Mr. Cushman in his life, and that he brought this up with Mr. Ehrlichman and suggested he call Mr. Cushman about this. And subsequently, 2 days later, a second memorandum was prepared at which time no names were mentioned at all as to who placed the call.

Tab 56.2—Mr. Jenner calls my attention to the fact that 56.5 is secret material as well. That is the transcript.

Mr. DENNIS. Mr. Doar? Do we know anything about who the gentleman alerted according to the notes? I assume that is a CIA deletion there on 56.5 at the bottom?

Mr. DOAR. I'm sorry?

Mr. DENNIS. Well, it says:

After the above conversation, which is the telephone call from Ehrlichman to General Cushman, General Cushman called Mr. [deleted] to alert him.

This is on the transcript of the recording.

Mr. DOAR. I think, Congressman Dennis, that we may know who that is from other investigations we made in connection with the Plumbers. But, my memory just fails me as to who it is. We do not have any people that worked on that here right now.

Mr. DENNIS. Well, of course, if it is important who made the notification, that man could be a corroborating witness perhaps.

Ms. HOLTZMAN. Mr. Doar, I note at the top of 56.5 it says partial transcript of Cushman-Ehrlichman telephone call. Does the staff have in its files the complete transcript?

Mr. DOAR. No.

Ms. HOLTZMAN. Has the staff asked for a complete transcript?

Mr. DOAR. The affidavit says this is all there is.

Ms. HOLTZMAN. OK. Thank you.

Mr. BUTLER. Mr. Doar, I believe it should be January 8, 1973, should it not at the top of page 56, item 56?

Mr. DOAR. That is correct.

Mr. BUTLER. And on item 56.3, exhibit 125, is that date January 3 or January 8, 1973, the Cushman memorandum?

Mr. DOAR. Eight.

Mr. BUTLER. I am referring—I know at the top it says January 8, 1973. Is the date on the memorandum, is that a 3 or an 8? Is that intended to be a 3?

Mr. DOAR. It says 3, but I think it's really January 8, from the testimony.

Congressman, we will look into that and get that date straightened out from the material.

Anyway, this is just the document that General Cushman sent to Mr. Ehrlichman after his conversation with him at his office in the White House when he said the call was either from Mr. Ehrlichman, Mr. Colson, or Mr. Dean.

In 56.4, this is the second memorandum which indicates that Mr. Cushman didn't recall who made the call. Then 57.

Mr. DAVIS. Tab 57, early in 1973 John Dean met with Assistant Attorney General Petersen. Petersen showed Dean documents delivered by the CIA to the Department of Justice at the October 24, 1972, meeting, including copies of the photographs connecting Howard Hunt and Gordon Liddy with Dr. Fielding's office. On a second occasion prior to February 9, 1973, Dean met with Petersen and discussed what the Department of Justice would do if requested by the CIA to return materials. Petersen told him that an indication that the materials had been sent back to the CIA would have to be made in the Department's files.

Mr. DOAR. By way of background, when Howard Hunt went to the CIA in July 1971, he was given a camera, a miniature camera as part of the equipment that was furnished to him by the CIA, and it was the type of a camera that had to be returned to the CIA for the development of the film. And the CIA kept a copy of the developed pictures. And so, they had these pictures that placed Gordon Liddy out in front of Dr. Fielding's office in Los Angeles, and also pictures of Dr. Fielding's office in their file.

It was these pictures that had been taken over to the Department of Justice in October. And as John Dean testified, that when he learned about this material, and this is at page 978 of 57.1, that he informed Mr. Ehrlichman about this. This is the second paragraph within the bracket.

And that is the reason that he subsequently requested that I seek to retrieve the documents before the Senate investigators got a copy of them.

So, Dean went over and discussed this with Petersen. Petersen, as had representatives of all of the agencies of the executive branch, received in early January a letter from Senator Mansfield with respect to the maintenance and security of all records relating to the Watergate case. And Petersen told Dean that if the CIA wanted to get the material back he would have to place an extract or a notation in the file which would reflect that documents had been returned.

And then Mr. Dean reported, he said :

I reported this to Mr. Ehrlichman, and Mr. Ehrlichman told him he thought the CIA ought to get all of the materials back, and that no card should be left in the file, and that national security grounds should be used to withhold release of this information.

Tab 58.

Mr. DAVIS. Tab 58 on February 9, 1973, Dean called CIA Director James Schlesinger. Dean suggested that the CIA request the Department of Justice to return a packet of materials that had been sent to the Department of Justice in connection with the Watergate investigation. Deputy CIA Director Walters contacted Dean on February 21, 1973, and refused Dean's request.

Mr. DOAR. In this fourth annotation under 58 it reflects John Dean's attempt to get the CIA to attempt to retrieve the material it had delivered to the Department of Justice. And Deputy CIA Director Walter's contact with John Dean on February 21, when he refused John Dean's request. This again followed Senator Mansfield's directive to all of the agencies to preserve evidence, and was the beginning of the Senate select committee investigation.

From looking at this material yesterday, I call your attention to 58.3, which is a memorandum by General Walters of the conversa-

tion with Mr. Dean on February 21. I do not have an explanation, nor do I know whether it is a typographical error that the memo of the conversation of February 21 is dictated on May 11, 1973. We are looking in to see if we can determine the reason for that.

That completes, Mr. Chairman, the volume No. 3. And item 58.3 is also marked secret. Now we will be in a position to deliver the volume 3, book I. We have got to go to the next book.

The CHAIRMAN. Book III. Book III, volume 1.

Ms. HOLTZMAN. The books to be delivered, noted on the affidavit that there did not seem to be a statement that our transcript was complete, on the affidavit, the memorandum of the telephone conversation between Mr. Ehrlichman and Deputy Director Cushman. The affidavit indicated 1, that there seemed to be dictabelts of such conversation, and 2 there was no indication that I can see that the summary that we were receiving was complete. And I would appreciate it if you could look into both of those things.

Mr. DOAR. All right. We will do that.

Ms. HOLTZMAN. Thank you.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I think it would be helpful, if it would not interfere with the routine of matters, if we could explain what the books are doing? I am confused. We worked up through 1972 and now we are going back to 1972 in this book. Could we just get some general picture of what we are doing here?

The CHAIRMAN. Mr. Doar will summarize that for us.

[Short pause.]

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, in answer to Congressman Waldie's question, in organizing the material for presentation to the committee, we organized around basically a chronological system of indexing material. However, we found that for absorption purposes by the staff that we had to organize topically as well, and that initially getting into the material and getting on top of it we had to organize, for example, the post-Watergate period, and we had topics dealing with the relationship of the White House to the Department of Justice, the relationship of the White House to the CIA, to the Department of Justice, false statements made by people, employees of the Committee To Re-Elect the President, false statements made by officials in the White House, payments of money to the defendants, the beginning of the activity of the Senate select committee, and the use by President Nixon of executive privilege.

In other words, we organized to try to get the material together and to try to get on top of it we looked at it topically as well as chronologically. And I believe that this is a problem, that when you look at any period of history you always have to decide whether you look at it one way or the other. We finally decided, the best we could, that we would try to go only chronologically. But we had gone so far with respect to our preparation topically between the period of June 20 and June 22 and some time in February 1973, topically, that we just could not put the material together. And we also thought that it might be a little easier for the committee to handle if we first examined the re-

lationship of the President and the White House, of key officials with the official investigations that were being conducted into the Water-gate break-in, and then look at the relationship of the White House the relationship of key officials in the White House, to the defendants that were targets or subjects of that investigation. This book looks at the targets, the subjects of the investigation, as contrasted to the book before that looked at the activities and the performance or lack of performance, the cooperation, lack of cooperation, interference or non-interference with the investigation.

After we get through this book, when we get up to the end of this, we then go straight chronologically from that point on, February 9 on.

Now, what we have planned, Mr. Chairman, for the rest of the day, is to present to you 47 paragraphs of material with the 47th paragraph being the tape of the President's conversation with John Dean on February 28, 1973, so that tape is a little over 1 hour in length. And I would, I would hope, I would want the chairman to know that I do not see any way that we could finish that material unless the chairman would consider and the committee would consider having a session this evening.

The CHAIRMAN. Well, I would think that in order that we hear that conversation without interruption, that it would not be wise to start listening to it at any time while the House is in session. And the Chair was going to then suggest that we meet after the House has adjourned today in order that we proceed to the listening of that conversation, which takes that length of time.

Mr. DANIELSON. Question of procedure.

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I'm not going to be able to sit through the entire playback, and I understand that I will be able to do that on my own time over at the staff headquarters, at some other time. Would that be correct?

Mr. DOAR. Yes.

Mr. JENNER. Yes, sir.

Mr. DOAR. Several members of the committee have asked in connection with the next tape recording, if we could have a demonstration of the different qualities and generations of the tape. For your listening purposes, we are prepared to do that at that time as well, and that would take 5 or 10 minutes, if any of the committee would wish it.

The CHAIRMAN. There is no objection, and I am sure that would be of interest to the members.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. I got the impression that Mr. Doar was asking are we going to have an evening session tonight. Was the Chair explaining we would not, we might, or what?

The CHAIRMAN. Well, the Chair would hope that we would not, but I frankly do not see how we are going to avoid it. So the answer is yes. The tape is going to take at least 1 hour, and think that it would be not only useful, but I think it would be really necessary that the tape be heard without interruption, because there is difficulty in starting the tape and in stopping it at a given point, and then coming back to that point.

Mr. RAILSBACK. Mr. Chairman, it might be helpful to some of us who are not going to be able to be here tonight that we hear the tape at that time, so if we want to hear it we will be able to go over and hear the tape on our own. Otherwise, if you go ahead with the presentation, we might miss something.

The CHAIRMAN. Well, counsel is going to go ahead with the presentation, insofar as I think it is going to help and lay the groundwork before that conversation is heard.

Mr. KASTENMEIER. Mr. Chairman, at what point does the tape come among the 47?

Mr. DOAR. It is the 47th item.

Mr. KASTENMEIER. It is the last item?

Mr. DOAR. Yes. And I would think we would try to get through as much of this book this morning as we could so that we could get up to paragraphs 40 or 42 this afternoon quite easily, and then maybe there would be 3 or 4 paragraphs tonight before the tape, and then the tape. Tab No. 1.

Mr. DAVIS. Tab No. 1—

Mr. DOAR. And I will say that the material in parts of this paragraph has already been covered, and so we can move, I think, we will move along rather rapidly. Tab No. 1.

Mr. DAVIS. On June 20 or 21, 1972, Fred LaRue, special assistant to the CRP Campaign Director, John Mitchell, and Robert Mardian, an official of CRP acting as its counsel, met in LaRue's apartment with Gordon Liddy. Liddy told LaRue and Mardian that he and Howard Hunt had developed the plans for entry into the DNC and the McGovern Presidential campaign offices, that certain persons involved in Watergate previously had been involved in operations of the White House Plumbers unit, specifically entering the offices of Daniel Ellsberg's psychiatrist, and making ITT lobbyist Dita Beard unavailable as a witness at the Senate Judiciary Committee hearing on the nomination of Richard Kleindienst to be Attorney General, and that he had shredded evidence related to the Watergate break-in. Liddy told Mardian and LaRue that commitments for bail money, maintenance, and legal services had been made to those arrested in connection with DNC break-in, and that Hunt felt it was CRP's obligation to provide bail money and to get his men out of jail.

Mr. DOAR. The last sentence in this statement of information is the only new information furnished. It is supported by testimony of Fred LaRue on 1.1. This meeting where Liddy came to Mr. LaRue's apartment, Mr. Mardian was there, and then he then gave him the information that he thought it was important that bail money and attorneys' fees be raised to back up these persons arrested.

Mr. Mardian's testimony is at 1.2, page 2357, which reflects a mixup or a dispute with respect to the date of this meeting. And he relates at page 2358, he does relate the meeting, and as you see down at the fourth paragraph from the bottom of 2358, Mr. Liddy wanted to hire Mr. Mardian as his lawyer, and Mr. Mardian said that he was the lawyer for the committee, and that he could not talk to him in complete confidence because he would have to disclose what he told to him to Mr. Mitchell. And then he said that Liddy was first reluctant, but then he did tell him that he had a message from Mr. Hunt, that Mr. Hunt

felt it was the committee's obligation to provide bail money to get his men out of jail.

And then he goes on to describe on page 2359 the type of activity Liddy's people and Hunt had engaged in. We have covered that before. And the clear impression that Mr. Liddy gave that he was acting on the authority of the President, and with the assistance of the Central Intelligence Agency. This I call to your attention was only Liddy's representation to Mr. Mardian on that day. Tab 2.

Mr. DAVIS. Tab 2—later that day—or, according to Mitchell, the day following—Mardian and LaRue met with John Mitchell and told him of their meeting with Liddy, including the details of the DNC break-in, the involvement of Magruder and Liddy in the DNC break-in, Liddy's and Hunt's prior surreptitious entry into the office of Daniel Ellsberg's psychiatrist, and Hunt's earlier activities involving Dita Beard. Mitchell was also advised of Liddy's request for bail money and of Liddy's statement that he got his approval in the White House.

Mitchell instructed Mardian to tell Liddy that bail money would not be forthcoming.

Mitchell has testified that he refrained from advising the President of what he had learned because he did not think it appropriate for the President to have that type of knowledge, and that he believed that knowledge would cause the President to take action detrimental to the campaign, and that the best thing to do was just to keep the lid on through the election.

Mr. DOAR. Tab 2.2 is Robert Mardian's testimony where he relates that he transmitted the request for bail money to Mitchell, and Mr. Mitchell said that under no circumstances would bail money be forthcoming. And he described, he told Mr. Mitchell with respect to some of the activities that Mr. Liddy had described to him, and then there is further testimony there with respect to the budget, and whether or not Mr. Mitchell had confirmed or denied that he had approved the budget. And Mr. Mardian said, "I don't think he did."

Mr. Mitchell's testimony at 2.3 indicates at 1622 that at that time, the first answer on the top of 1622 Mr. Mitchell testifies as to his knowledge of what Mr. Liddy's activities included; that is, the surveillance of the McGovern headquarters, a part of what has since become known as the Plumbers work, acted extensively in certain areas while he was at the White House in connection with the Ellsberg matter and the Dita Beard matter, "and a few of the other little gems." And Mitchell then was asked, "When you say the Ellsberg matter, what specifically are you referring to?" and Mitchell replied:

"Obviously it had to do with the surreptitious entry of the doctor's office in California."

Page 1628 is Mr. Mitchell's testimony in full with respect to not telling the President of this. He said in his second or third answer there within the brackets—

He was not involved. It wasn't a question of deceiving the public as far as Richard Nixon was concerned. It was the other people that were involved in connection with these activities, both in the White House horrors and the Watergate. I believe at that particular time, and maybe in retrospect I was wrong, but it occurred to me that the best thing to do was just to keep the lid on through the election.

At page 1634, Mr. Thompson asks Mr. Mitchell a question which is not included within the brackets, but he says—and this is at the top of the page—

That is what caused you to take that position with regard to Magruder, and I also assume that those factors were the reason why you, in effect, acquiesced any way in the payments to the families of the support money and lawyers' fees and that sort of thing, which I am sure you realize could have been pretty embarrassing, to say the least, if not illegal at that time? Would that be correct as far as your motivations are concerned?

That's a correct summary of my motivations and rationale for the actions that I did take.

And he testified of the activities of the Liddy group prior thereto, and that is brought out within the bracketed material. Tab No. 3.

Mr. DAVIS. Tab 3—during the week after the break-in at the DNC, Jeb Magruder told Hugh Sloan that Sloan might have to perjure himself regarding his payments to Gordon Liddy prior to the break-in. Magruder told Sloan that Sloan would have to say that he had given only approximately \$75,000 to \$80,000 to Gordon Liddy. Sloan had, in fact, given Liddy approximately \$199,000.

Mr. DOAR. The committee will remember that prior to going over to the Committee To Re-Elect the President, Magruder and Sloan had worked for Haldeman. Mr. Sloan had worked under Chapin, screening appointments and invitations for the President. Mr. Magruder had been a public information man and had started out on Mr. Haldeman's staff and then had gone over to Mr. Klein's staff to help organize that office.

Tab 3.1—well, before I get to that, Mr. Sloan had given to Gordon Liddy \$199,000 in cash following the approval of the Liddy plan in March 1972. And according to Mr. Magruder, at page 800 of 3.1, Mr. Sloan came to him and they discussed what they were going to do about the fact that they had turned over all this money to Mr. Liddy. And according to Mr. Magruder, Mr. Sloan came up to his office, and he, in attempting to allay his concerns, says, "We talked about what we do about the money." And Mr. Magruder says that—

"My understanding of the new election law indicated that he would be personally liable for cash funds not reported. So, I indicated at that meeting that I thought he had a problem and might have to do something about it. He said, you mean commit perjury, and I said, you might have to do something like that to solve your problem, and very honestly I was doing that in good faith to Mr. Sloan to assist him at that time.

The next page he says they had two or three meetings and they discussed this problem. "Mr. Sloan obviously was anxious about it." But he would not tell him exactly how much money he had turned over to Liddy. Magruder was pressing him to come in with a low figure, because that low figure would be easier to justify. Mr. Sloan indicated that it was a higher figure. And at the end of the testimony, he says, "I think the real problem was that he knew it was \$199,000. I was aghast at that figure because there was no way Mr. Liddy should have received that much money in that short period of time."

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Is it possible for the staff to give us the cross-references to the earlier testimony? It is my recollection, and I could

be clearly wrong, that the figure of \$80,000 was contained in prior testimony about the sums authorized to Liddy. Is my memory faulty in that respect?

Mr. DOAR. I think the \$80,000 is one payment, \$83,000 is one payment. There was \$83,000 paid in April 1972.

Mr. WIGGINS. I see. I see.

Mr. DOAR. The budget was \$250,000.

Mr. WIGGINS. And the \$199,000 figure represents the totality of payments up to the break-in; is that it?

Mr. DOAR. That is my understanding.

Mr. WIGGINS. OK. Thank you.

Mr. DOAR. Tab 3.2 is Mr. Sloan's figure, and he testifies that they talked again about a low figure of \$75,000 to \$80,000, "And I told him that that was not the right figure. I didn't have the right figure, that is too low." This is above the bracket. "He indicated to me at that time that I said to him he must have been insistent because I remember making to him on that occasion a statement that I have no intention of perjuring myself." Mr. Dash said, "What did he say to you?" And he said, "He said you may have to."

Tab No. 4.

Mr. DAVIS. Tab 4.

Mr. JENNER. Excuse me. Mr. Chairman, ladies and gentlemen. Mr. Silbert testified before the Senate Judiciary Committee, and we will supply you with this additional testimony after what Mr. Doar has reported. And if in connection with Mr. Silbert's testimony he testified as follows with respect to that particular subject matter; that is, his post-Watergate conversations with Sloan, Magruder said as his version, which as I recall was similar to what he said before the Senate select committee.

Look, Sloan and I—

And this we also knew from Sloan—

We did not get along. We were rivals. I wanted to find out from him the amount of money because I couldn't remember. I kept asking him and he wouldn't tell me. I kept going back to him and suggesting one figure, \$45,000, one \$70,000, and I just couldn't recall. Finally he told me, and he told me it was \$199,000. I was flabbergasted at that amount of money. It was more money than I thought it should have been because I had authorized \$250,000 over a period of 10 months, and they were only halfway through the 10-month period. But, he said it was, and I accepted it, and that was the testimony before the grand jury. But, I was not trying to get him to commit perjury. As I am sure you know, Senator Hart, though, Magruder has acknowledged to us in his secret—in his negotiations he has had with us and also before the Senate select committee though, he did testify falsely, both before the grand jury and at the trial to a number of matters, that he did not testify falsely on this matter, and that he did not try to get Sloan to commit perjury, and that was his version. It was two people coming at the same event from different perspectives, neither one liking one another, based primarily, I assume, on the fact that they were rivals within the campaign organization.

We will supply that to you as an extra tab.

Mr. DENNIS. We are going to get that from you, are we?

Mr. JENNER. Yes.

Mr. DENNIS. Well, I won't bother you then, because I didn't understand just where this testimony was given or when, but I suppose the tab will show us that.

Mr. JENNER. It's Mr. Silbert, the Assistant U.S. attorney, before the Senate Judiciary Committee.

The CHAIRMAN. That will be supplied to the members.

Mr. DENNIS. Thank you.

Mr. DOAR. Tab No. 4.

Mr. DAVIS. Tab 4, on the afternoon of June 23, 1972, Hugh Sloan met with John Ehrlichman at Sloan's request to discuss Sloan's cash disbursements to Liddy. Ehrlichman told Sloan that he did not wish to discuss the subject with him and suggested that Sloan get an attorney. Sloan has testified that Ehrlichman said that he would take executive privilege with respect to whatever Sloan told him until after the election. Earlier that day Sloan had spoken to Dwight Chapin, the President's appointment secretary, about his concern that there was something very wrong at the campaign committee. Chapin said that the important thing was that the President be protected.

Mr. DOAR. Hugh Sloan's testimony before the Senate select committee is at 4.1. He testifies that on Thursday the 22nd, he went on a boat trip on the Potomac, and he describes his mood as being agitated and angry, and that he talked to a number of people in the White House. He mentions Mr. Cole, who is Mr. Ehrlichman's assistant, Mr. Chapin, and Mr. Pat Buchanan, and expressed a concern that something was very wrong at the campaign committee, and Mr. Cole said:

Yes, Mr. Cole indicated to me that I was expressing to him and Mr. Chapin that I felt that John Ehrlichman and Bob Haldeman should be aware that there was a problem. I don't know whether I specifically requested a meeting with Bob Haldeman, but I indicated to him that Bob should have this knowledge. And he asked me, he is speaking now about Chapin, to come to see him the next day.

The next day Mr. Cole called him. Mr. Cole, you remember, was one of Mr. Ehrlichman's assistants in the Domestic Council in the White House staff organization, and he told him that Mr. Ehrlichman would like to see him at 2 o'clock that afternoon. And he first went to, he first went around noon to see Mr. Chapin, who was President Nixon's appointment secretary, and worked under Mr. Haldeman, and Mr. Chapin suggested that his condition at that point was as being somewhat overwrought, and suggested a vacation, and Mr. Chapin suggested that the important thing was that the President be protected.

And then Mr. Sloan goes on to say that he, on the next page, 546, or excuse me, on 545, he then goes on in to see Mr. Ehrlichman.

You see Mr. Ehrlichman's log on 4.3. You will see that Mr. Sloan came to Mr. Ehrlichman's office at 2 o'clock that afternoon, Friday afternoon, June 23. And at the bottom of 545 of 4.1, Mr. Sloan said, "I started into generally the same discussion of problems." And Mr. Dash said, "When you say problems, did that include any statement by you about cash disbursement that had been made to Mr. Liddy?" Mr. Sloan said, "I do not believe I at that point in time was pointing fingers. I don't believe I mentioned the Magruder remark. I do not believe I mentioned the money to Liddy or the Liddy remark. I just said I believed somebody external to the campaign has to look at this because it raised in my mind at that point the possibility of the entire campaign being involved." Mr. Dash: "What was Mr. Ehrlichman's response?"

And then at the top of page 546, Mr. Sloan says:

I believe I expressed my concern, my personal concern, with regard to the money. I believe he interpreted my being there as personal fear, and he indicated

to me that I had a special relationship with the White House, if I needed help getting a lawyer he would be glad to do that, but do not tell me any details. I do not want to know. My position would have to be, until after the election, that I would have to take executive privilege.

Tab 4.2 is Mr. Ehrlichman's testimony before the Senate select committee at page 2699, and he testifies with respect to this meeting. And Senator Ervin is questioning him and he says:

Didn't Mr. Sloan come up and want to tell you about this, and you said I don't want to hear anything about it because if I hear anything about it I will have to take the executive privilege until after the election?

Mr. Ehrlichman said:

I don't know what it was that Mr. Sloan wanted to tell me, because after we had talked for a few minutes, and I had determined that he felt that he had some exposure, but that he had not talked to an attorney, I told him that it would be grossly unfair of me to hear him out until he had an opportunity to talk with an attorney and to take counsel on his own situation.

And Mr. Ehrlichman explains this to Senator Ervin by saying:

Duke Sloan had been a young man that I had known well during a time that he worked in the White House I didn't want to see him tell me something before he could talk to counsel that later on was going to prove his undoing. You see, his wife, Debby, also worked at the White House and was well known to my wife and me, and I just didn't want to see him overreached.

Tab No. 5.

Mr. DAVIS. Tab 5. On June 23, 1972, Mitchell, Mardian, LaRue and Dean attended the meeting in Mitchell's CRP office. Mardian raised the possibility that since the persons arrested were former CIA people, the CIA should take care of its own in furnishing their bail money. It was suggested that Dean determine if the CIA assistance could be obtained. Mitchell has testified that to his best recollection the concept of the CIA as providing funds was not discussed in his presence.

Mr. DOAR. We have generally covered this paragraph for the committee. Mitchell's testimony at 5.3 was that the committee couldn't provide the money under existing statutes. Mardian made a suggestion that the CIA be contacted, and Mitchell discussed at 5.4, testified that he considered there might be some possibility there because of CIA involvement.

And John Dean, at 5.1, testifies that he explored with Mr. Ehrlichman and Mr. Haldeman having the White House contact the CIA for assistance.

Tab 5.4, Mr. Mitchell's testimony at 1899 with respect to the CIA's source of coverup money, and Mr. Mitchell says:

No, sir, I did not. And of course I think Mr. Dean testified—I don't—I do not know whether his testimony is accurate or not. He started out by placing that in my lips and wound up with it with Mr. Mardian. Now, this may be a perfectly honest mistake on his part. There were discussions, of course, as I testified I think on this first day about the question was the CIA involved. The newspapers were filled with it. The individuals that were involved worked for the CIA. There were a number of such matters, but the concept of the CIA support, of providing funds in connection with this activity was not discussed in my presence, to my best recollection.

Tab No. 6.

Mr. DAVIS. Tab 6. On or before June 26, 1972, John Ehrlichman told CIA Deputy Director Vernon Walters that John Dean would be Walters' White House contact on matters affecting Watergate. On

June 26 or 27, 1972. Dean met with Walters and discussed the possibility of using the CIA to provide funds for the bail and salaries of persons involved in the break-in at the DNC headquarters. Walters rejected this suggestion. On the morning of June 28, 1972, Dean repeated the suggestion to Walters that the CIA assist the persons arrested. Walters again rejected the suggestion.

Mr. Doar, Mr. Ehrlichman's testimony is that he advised the CIA early, following the break-in, that John Dean was the fellow following the entire matter. That's at page 2661 of 6.1. And he said, "We, in effect, we turned General Walters and Mr. Helms over to Dean for any future contacts that they might have on it."

Tab 6.2 is General Walters' testimony. He relates that on the 26th he got a phone call from a man named John Dean, and he said that he wanted to speak to him about "matters that Mr. Haldeman and Mr. Ehrlichman had discussed with me on Friday." The committee will remember that on the 23d of June Mr. Haldeman and Mr. Ehrlichman had met with Mr. Helms and General Walters at the White House with respect to the Watergate break-in and the matter of whether or not the CIA was connected with the break-in in any way. And Friday is that 23d. General Walters says, "I don't know Mr. Dean. And Mr. Dean said, well, you can call Mr. Ehrlichman to see if it's all right to talk with me." And Mr. Walters then called Mr. Ehrlichman and he said, "Mr. Dean wants to talk with me about matters discussed with you and Mr. Haldeman on the preceding Friday, and Mr. Haldeman said yes, it is all right to talk with him. He is in charge of the whole matter." And so they did talk about 11:30 or 11:45 that day, and Mr. Dean said he was handling the whole matter. It was causing a lot of trouble, and it was very embarrassing. The FBI was investigating it. They had leads that had led to some important people, and it might lead to some more important people.

General Walters then speculated hypothetically as to who was responsible for this crime, the break-in, and he related his conversation with Mr. Haldeman and Mr. Ehrlichman the previous day. Then he said he checked with the Agency and there was nothing in the ongoing FBI investigations that could jeopardize CIA activities. He then relays that Dean kept pressing him as to how he could help, and Mr. Walters deferred, and then they raised the question of bail money. And if you see on page 3410, Mr. Dean directly asked him in the middle of the page, "Well, would there be any way in which you could go bail or pay the salaries of these defendants?" And General Walters said, "No way." And then he relates the importance of maintaining the integrity of the CIA in the United States, and within a democratic society, and he was determined that, "I would not see it destroyed or implicated," and that he said, "He made the specific point that if we did spend any money we would be required to report this to our Oversight Committees of Congress."

Mr. JENNER. John?

Mr. DOAR. Yes.

Mr. JENNER. Yesterday morning there was the question of whether Mr. Dean had been put in charge of an investigation. Mr. Doar has now related to you as to the report made to General Walters, that is that Mr. Dean was in charge, at least of this particular phase, and that

continues to bear on that issue, which you will ultimately consider and resolve.

Mr. DOAR. At 3411 General Walters relates how he goes back to Mr. Helms, and he concluded that there was clear indication that something improper was being explored, and, "We agreed that we would write a memorandum and keep memorandums from then on of these meetings between Mr. Dean or other White House officials with members of the CIA."

Mr. Dean's testimony with respect to how he went over to ask the CIA for money is on 6.3 at page 946. He said:

I spoke to Mr. Ehrlichman and Mr. Ehrlichman thought it was a good idea, and he told me to call the CIA and explore it with him. He said I should not call Helms, but rather call General Walters. He said he and Mr. Haldeman had had a little chat with Helms and Walters. He told me that I should deal with General Walters because he was a good friend of the White House. The White House had put him in the Deputy Director's position, so they could have some influence over the Agency.

On 947 in the third paragraph, Mr. Dean reports how following this meeting with Mr. Walters he reported back to Mr. Ehrlichman that CIA involvement was impossible, and Mr. Ehrlichman cynically said, "That's interesting." And told him he should talk with General Walters further and push him a little harder to see if the CIA couldn't help out, particularly with regard to the unnecessary pursuit of investigative leads. And Mr. Ehrlichman said something to the effect that "General Walters seems to have forgotten how he got where he is today."

Then Dean relates how he met the next day and again that Walters refused to provide assistance from the CIA for the defendants. And on 948 Mr. Dean reported to Mr. Ehrlichman and Mr. Haldeman that unless the President directly ordered the CIA to provide support for those involved that the CIA was not going to get involved.

And 6.4 is Mr. Walters' contemporaneous memorandum of the phone call, of the way John Dean got over there, that Dean called on the 26th, referred to the matter that Ehrlichman and Haldeman had discussed on the 23d, and it relates in General Walters' memorandum the detailed information that I have already spelled out to you.

And then you see on the 29th Mr. Walters is confirming the second meeting that he had with Mr. Dean on the 27th, saying that it was, that there was a legislative constraint about expenditures within the United States, and there would not be any way he could keep it secret, and that that would just cause further trouble.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I just wonder if counsel thinks there is significance to the fact that John Dean throughout his testimony apparently indicated that he had not pressured Walters at all, and that he had really—he states he had refused to try to pressure him. And yet it seems to me, my recollection is that Vernon Walters' testimony is contrary to that. Is that correct? In other words, he seems to indicate in his testimony, as I recall, that John Dean really was persisting and pressuring him, and there was no indication that John Dean backed down at all.

Mr. DOAR. Well, I don't think that's quite the way I read the testimony. Congressman Railsback, because of General Walters' statement at the last paragraph of his memorandum of June 29.

Mr. RAILSBACK. Where is that now?

Mr. DOAR. That's at 6.5 where he said, "Dean thanked me, looking glum, and said he agreed with my judgment in all of these matters."

Mr. RAILSBACK. Yes, I see. Thank you.

Mr. DANIELSON. Where is that?

Mr. DOAR. It's on page——

Mr. JENNER. 3818 under——

Mr. DOAR. Tab 6.5.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. The deletion on page 3816 there appears to be a sentence having been deleted. Do you know what was in that, the document, the exhibit 130?

Mr. DOAR. No, I don't. I don't believe so. Let me explain. Those are Agency deletions, and we have got——

Mr. COHEN. I understand that.

Mr. DOAR. We have an understanding with them that they will give us information. But, the CIA is a very reticent Agency with respect to information. So, sometimes, you know, they will come over with—— they came over to our office with eight or nine volumes of very nicely bound books, and well tabbed, and well indexed and well cross-referenced. But, really, when you went through them there wasn't a great deal in them. And we had to go back, and you have to be very specific.

If you say give us something very specific, and I think Mr. Colby expressed the CIA philosophy when he said that he danced around the question for 10 minutes and finally he was pinned and when he was pinned he answered. Now, I don't suggest that there is anything particularly devious about that with respect to them, but that is the way the CIA operates, and I believe they believe that is the way they must operate. They just do not volunteer any information.

Mr. JENNER. Congressman Railsback, if I may observe with respect to your question, it is true that that letter to which Mr. Doar has called your attention does end up in a favorable way in the last paragraph. But, there is a matter of weighing the testimony of General Walters and of Mr. Dean on this issue as to the intensity of the conversation of Mr. Dean with General Walters, even though it ended up on a favorable note.

Mr. DOAR. It seems to me, Congressman, taking into consideration the organization of the White House, the fact that John Dean, although he was counsel to the President, reported to Mr. Haldeman, sometimes to Mr. Ehrlichman, and the way that that staff functioned, that Dean would go over and press if he had instructions to try to see if there were some way the CIA could help, that if he testified that he was not pressuring him at all, that that has to be taken in the context of what his instructions were from his superior.

Mr. RAILSBACK. Yes. Let me just say I brought it up only because I thought maybe Mr. Dean had——was perjuring himself in that particular instance, but then I thank you for pointing out that one paragraph in the memorandum.

The CHAIRMAN. The Chair would like to urge that the members try to inquire only when there is need for some clarification, rather than to try to read the intent or what is spelled out, unless counsel

is able to point out by testimony that is in the written record or some cross-reference that may shed some light on it. But, I think it is absolutely inappropriate and improper to try to get from counsel their meaning or their interpretation. So, I think that the committee would be well served if we deferred any of these questions for ourselves rather than for counsel. Proceed.

Mr. DOAR. Tab No. 7.

Mr. DAVIS. Tab 7, on June 28, 1972, John Ehrlichman met with John Dean at the White House. Ehrlichman approved Dean's contacting Herbert Kalmbach, the President's personal attorney, and a Presidential campaign fund raiser to ask Kalmbach to raise funds for the Watergate defendants. Kalmbach flew to Washington during the night of June 28, 1972, and the following morning Dean met Kalmbach and asked Kalmbach to raise and distribute such funds. Dean indicated that Kalmbach should raise from \$50,000 to \$100,000 and Kalmbach accepted this assignment. Kalmbach has testified that he acted in the belief that these payments were necessary to discharge a moral obligation that had arisen in some manner unknown to him by reason of earlier events.

Mr. DOAR. Now, our statment of information indicates that John Ehrlichman met with John Dean at the White House. More accurately it would be stated that John Dean went to Mr. Ehrlichman's office at the White House and I think, I would like to jump or stop for 1 minute on 7.1 and look at Mr. Ehrlichman's log for the days of Monday, Tuesday, and Wednesday of that week.

Mr. Ehrlichman begins Tuesday morning and goes to Mr. Halde-man's office. He met with Mr. Colson and Mr. MacGregor and then the President and then John Dean. And then on Wednesday he sees Mr. Haldeman again. And each day he sees Mr. Haldeman, for 15 minutes the first thing in the morning. He sees John Dean at 10:45, at 2:10, and at 6:30 on that day.

And Mr. Jenner points out that after seeing John Dean at 2:10 he sees the President at 2:30 on the 28th.

Mr. Ehrlichman's testimony about the approval of this idea of contacting Mr. Kalmbach to raise funds for the Watergate is found at 2566 and 2567. He said that Mr. Dean said that John Mitchell felt strongly that it was important to have good legal representation for the defendants.

And then if you look at 2568, there is a discussion about Mr. Ehrlichman's relationship with Mr. Kalmbach. And at 2569 is Mr. Ehrlichman describing it.

Mr. Dean said to him, and this is at the top of the page:

Look, I am going to see if we can get Herb Kalmbach wound up to raise some attorney's fees for John Mitchell who said we have really got to do it for the reasons I have stated. He said if he checks with you, back me up on this.

And Mr. Ehrlichman said that he didn't check with him.

Tab 7.7 is John Dean's testimony before the grand jury and this testimony was given on November 19, 1973. At page 93 he was asked:

Did there come a time when Mr. Mitchell asked you to seek your superior's permission to go ahead and contact Mr. Kalmbach about becoming involved in raising money for the defendants?

Answer:

Yes. He specifically asked me to check with Mr. Haldeman and Mr. Ehrlichman as to the use of Mr. Kalmbach.

Do you recall any comments that he made on that occasion?

Yes, I do. I recall—well, where it happened. I was in his office at the Re-election Committee—I should say his law office over in the same building. I was standing by his desk, and he said to me that I should go ahead and check with Haldeman and Ehrlichman about using Kalmbach, because he thought that they would be very interested in using Kalmbach, because he felt they would be very interested in seeing this problem dealt with.

Did you, in fact, seek the approval of both Mr. Haldeman and Mr. Ehrlichman?

Yes, I did. I sought it and received it.

On page 103 Mr. Dean is asked—

You initially got approval for this operation from Mr. Ehrlichman?

That's correct, and Haldeman.

Did you subsequently discuss how this was going with Mr. Ehrlichman on occasion?

It came up on a regular basis, on a regular basis, yes.

Mr. JENNER. And in a subsequent paragraph you will find testimony to which we will call your attention of conferences between Mr. Kalmbach and Mr. Ehrlichman in which they discussed the subject matter.

Mr. BUTLER. When you talk about Mr. Ehrlichman in paragraph 7 approving these things, you don't mention Mr. Haldeman, but apparently he did. Was there any reason for overlooking that? Are we going to have another discussion of Haldeman's approval of this?

Mr. DOAR. Well, I wondered about that myself. We would have to add there, according to the testimony of Mr. Dean, Mr. Haldeman approved this arrangement. We don't have any corroboration of that.

Mr. BUTLER. Thank you.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I am reluctant to interfere or interrupt for any purpose, but back at tab 7.2 at page 2566, at the bottom, Ehrlichman is stating a rationale which apparently came from Mr. Mitchell. Can you hear what I am saying?

Mr. JENNER. We are having difficulty.

Mr. WIGGINS. All right. Mr. Ehrlichman at the bottom of page 2566 of tab 712 is stating a rationale attributed to Mr. Mitchell for the reason of money. To me this is a new rationale, and I am wondering if there is any corroborative evidence, evidentiary material which you can cross-reference to that?

Mr. DAVIS. This is the only reference I know to the civil damage suit. As you go through the materials you will see references to various reasons by various people for doing this. This is one of the first paragraphs on these payments and as you go through there will be a number, and maybe at the end we could get all of the cross-references.

Mr. WIGGINS. Fine. Thank you. Thank you, Mr. Chairman.

Mr. DOAR. On 714, page 950, Mr. Dean testifies before the Senate select committee and tells about meeting Mr. Kalmbach at the Mayflower Hotel on June 29. There is a conflict as to where that meeting was held. And he says that Mr. Kalmbach was not happy with this assignment. It was only because Mitchell, Haldeman, and Ehrlichman had so requested. He said:

I don't know if Mr. Kalmbach discussed this with any other persons, but given the nature of the request, I did not expect him to take it on at my word alone,

and he has pointed out that this was the first time that I had ever given any instructions to Mr. Kalmbach to raise any money or ever passed on any similar instructions to him.

Mr. Kalmbach was the attorney for, personal attorney for President Nixon. His offices were in California. And he had raised money, and substantial sums of money prior to April 7. He had indicated to members of President Nixon's political hierarchy that he wanted to get out of that business, and didn't want to do any further fundraising. And he was apparently gradually withdrawing from that when he got this call from John Dean on the 27th, as he testifies at 7.5, on the 28th of June, and Dean called him and asked him if he would come to Washington, that it was a matter of extreme importance. So, he took the evening flight and arrived in Washington at 6:15 on the 29th, and he relates that they met in the park across from the Adams Hotel and Mr. Dean said "We would like to have you raise funds for the legal defense of these defendants for the support of their families."

And Mr. Kalmbach said "Wouldn't it be better to have a public committee formed to raise funds for these people, and maybe the people could mortgage their homes to raise funds?"

And Mr. Dean said there was no time for this, a public committee might be misinterpreted and he just waved it aside. And there were questions. "Did Mr. Dean indicate how much money would be involved?" And he said "\$50,000 to \$100,000." And then they talk about whether or not or what was said about secrecy. Mr. Kalmbach said "Yes, he made a very strong point that there was absolute secrecy required, confidentiality, indicating that if this became known it might jeopardize the campaign, would cause misinterpretation as to the reasons for raising the funds and for the help of these people."

Tab number 8.

Mr. DAVIS. Tab 8, on or about June 28, 1972, Magruder met with Herbert Porter, who was in charge of the CRP surrogate speakers program and asked Porter to corroborate to the FBI a false story that CRP had paid Liddy \$100,000 to conduct lawful intelligence projects to prevent disruption of campaign speeches by radical groups. Porter agreed to repeat the false story to FBI agents. Porter has testified that he felt a deep sense of loyalty to the President and was appealed to on this basis.

Mr. DOAR. This is a further development of trying to figure out. Magruder tried to figure out a way to explain why Liddy got all of this money and he went to this young man, Herbert Porter, and he asked "Can you tell me a way we could do this?" And Porter said "That could be explained, could be rationalized. You could just say that you were paying students \$1,000 a month for 10 months, and take 10 or 12 students, and that would eat up \$100,000 pretty fast and that wasn't very much in a \$45 million campaign."

Specifically, Mr. Magruder explains his justification for this. He denies that anyone asked him to do anything. I am on page 801. He said "I personally thought it was very important that this story did not come out in its true form at this time, as I think did the other participants. No one coerced me to do anything. I volunteered to work on the coverup story." And he relates then about this fabricated story, and the series of meetings prior to his first, second, and third grand

jury appearances that ran into September. And he relates the main participants were Mitchell, LaRue, Mardian, and Dean.

And he relates on 802 how he asked Porter if he would be willing to work with them on the coverup story and Porter indicated he would. He said that his primary contacts on the story were Dean and Mitchell.

Now, the next answer by Mr. Magruder, which is in the middle of the page, and Mr. Dash said:

'Could you tell us why the story required that the break-in involvement be cut off at Mr. Liddy and not at you?'

Well, there was some discussion about me and I volunteered at one point that maybe I was the guy who ought to take the heat, because it was going to get to me and we knew that. And I think it was. There was some takers on that, but basically the decision was that because I was in a position where they knew that I had no authority to either authorize funds or make policy in the Committee, that if it got to me it would go higher, whereas Mr. Liddy, because of his past background, it was felt that that would be believable, that Mr. Liddy was truly the one who did originate it.

And, of course, it was true I think that Mr. Liddy did originate the plan and was basically the one who did come up with these ideas in specific terms.

Tab 8.2 is Mr. Porter's testimony. I won't go through that with you. I am sure that the committee may well remember Mr. Porter telling how he was approached as being a team player, stating his dedication to President Nixon and the Nixon administration, and a conference that he had with a friend of his who was a lawyer and how he said, well, it really didn't make much difference if Liddy went off and did something illegal.

I am at 645 of Mr. Porter's testimony.

If the one thing is going to embarrass the President and the other is not, I would not do it for Mitchell, I would not do it for Haldeman, but I would do it for the boss. And that is the feeling that I had at the time.

And paragraph 9.

Mr. DAVIS. Tab 9, on June 29, 1972, after Kalmbach agreed to undertake the fundraising assignment, he telephoned Maurice Stans and told him he needed from \$50,000 to \$100,000 for an important and confidential White House assignment. Later that day, Stans delivered \$75,000 in \$100 bills to Kalmbach in Kalmbach's hotel room. The next day Kalmbach delivered the funds to Anthony Ulasewicz, who previously had undertaken assignments for the White House. Kalmbach told him that the funds were for the Watergate defendants, that the payments would be in absolute secrecy and that contact between Kalmbach and Ulasewicz would be from phone booths using alias names.

Mr. DOAR. Kalmbach's testimony was that this assignment was to be conducted with absolute secrecy, complete confidence and that there was to be a disguise, secret method of delivery of the money.

Now, Mr. Ulasewicz had worked for the White House prior to the 1972 campaign, and he had worked I believe for several years for the White House although he had been paid by Mr. Kalmbach. And Mr. Kalmbach knew him. And Mr. Dash asked him if he had confidence that Mr. Ulasewicz was the kind of man who could be useful in this kind of assignment and he said:

I knew he had been undertaking assignments for the White House in that period, and I certainly knew he had the confidence of whoever it was he was

working with, and when he mentioned Mr. Ulasewicz is someone to deal with, I said that I would, I certainly would have confidence in him.

And then he said "You know who Mr. Ulasewicz worked with?" And he said "Mr. Dean." Then he said he reported to Mr. Ehrlichman and he also worked closely with Mr. Haldeman.

Then he relates how he called Mr. Stans and made arrangements to get the cash.

Tab 9.2, Mr. Stans relates at the bottom of page 702 that Mr. Kalmbach came to him and said that he needed the money. "I am on a special mission on a White House project and I need all the cash I can get."

Mr. Stans said "I don't have any cash. Will you take a check?"

And Kalmbach said "No, I can't take a check. It must be cash. This has nothing to do with the campaign, but I am asking for it on high authority."

He was asked what higher authority did he say and Mr. Stans said he did not say. "I am asking for it on a high authority and you will have to trust me that I have cleared it properly." So on that representation Mr. Stans gave Mr. Kalmbach \$75,000 in cash.

Mr. Kalmbach's past relationship with Mr. Stans was explored and he said "Was he your superior in the organization, the campaign organization?" He said "No, but he was a man I knew very well. He had been my principal deputy in the 1968 fundraising campaign. He subsequently had a close affiliation with a number of people in the White House that I was aware of. He was personal counsel to the President. He was a man that I knew was a man of the highest integrity, trustworthiness and honesty. And I had no doubt, no reason to doubt anything he told me and I didn't."

Mr. Ulasewicz testifies and relates how Mr. Kalmbach contacted him and asked if he would assist in providing payments to members of the families that were in difficulty, and he recognized that it involved the Watergate situation.

Tab No. 10.

The CHAIRMAN. Go on for 5 more minutes.

Mr. DOAR. Tab No. 10.

Mr. DAVIS. Tab 10, on or about June 29, 1972, LaRue met Kalmbach in Kalmbach's hotel room. Kalmbach advised LaRue of the nature of his assignment to provide financial support to the Watergate defendants. He discussed the method whereby the defendants could be contacted, how the amount of money needed could be determined and the man who would make the contacts, Ulasewicz, alias Rivers, and a code name to be used for contact between Mr. Kalmbach and LaRue; that is, Mr. Bradford.

They determined that the contacts with the defendants should be made through the defendants' attorneys.

Mr. DOAR. Mr. LaRue testified before the Senate select committee about how Mr. Kalmbach contacted him, and they discussed this very secret operation, code names, pay telephones and other types of code arrangements. And this was on the 29th of June.

Mr. Kalmbach's testimony at 29.2 is a repeat and 10.2 repeats the testimony I believe of what was included earlier, and that reaches tab 11.

And, Mr. Chairman, that is a good place to take a recess.

The CHAIRMAN. Yes. We will recess until 2 o'clock.

[Whereupon, at 12:19 p.m. the committee was recessed to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will resume.

Mr. Doar?

The Chair would like to urge once again, if it is at all possible, to defer any questions unless these actually are questions that seek clarification of that particular point. I ask that we try to defer that until the time of recess.

The Chair intends to recess about 5 o'clock and then to come back at 6:30. Mr. Doar.

Mr. DOAR. Before starting with paragraph 11, Mr. Chairman, I did not introduce to the committee this morning two other lawyers from our staff, Tom Bell and Mike Conway, who are sitting behind me. Mike Conway is on my left and Tom Bell is immediately behind me.

Mr. JENNER. Also, Mr. Chairman, another member of the staff, Mr. Ben Wallis, in the navy blue suit.

The CHAIRMAN. Please proceed.

Mr. DOAR. Sir, tab 11.

Mr. DAVIS. Tab 11, in early July 1972, the President met with John Erlichman. Erlichman has testified that they discussed executive clemency with respect to those who might be indicted in connection with the break-in at the DNC headquarters, and that the President told him that he wanted no one in the White House to get into the area of executive clemency with anyone involved in the Watergate case and that no assurances of executive clemency should be made to anyone. At the time of this discussion with Erlichman, the President was aware that Howard Hunt had "surfaced" in connection with the Watergate break-in and was a former member of the Special Investigations Unit in the White House "the Plumbers." The President was concerned that the FBI investigation of the break-in not expose the activities of that unit.

Mr. DOAR. The committee will remember that the Plumbers was the name of the White House Special Investigative Unit that operated in the White House between July and December 1971, for the purpose or purported purpose of plugging leaks from Government agencies. This paragraph of information involves a discussion that John Erlichman has testified that he had about executive clemency in early July 1972.

At this time, the five persons had been arrested in the Watergate case. Mr. Liddy and Mr. Hunt had not been arrested, although they were subjects of the investigation. President Nixon says in his statement on May 22, 1973, which is at tab 11.6, that he had to be deeply concerned with insuring that neither the covert operations of the CIA nor the operations of the Special Investigative Unit, that they not be compromised.

Then going back to John Ehrlichman's testimony, he has testified twice before the Senate select committee about this conversation.

Then he testified on September 13 before the grand jury. That is the testimony that I wish to call the committee's attention to.

The President and Mr. Ehrlichman are out at San Clemente.

This is tab 11.1 at page 88.

The President and Mr. Ehrlichman are out at San Clemente around the week of the Fourth of July 1972. They are taking a walk on the beach on the Pacific and they discussed a number of subjects. According to Mr. Ehrlichman's testimony, they discussed executive clemency. He is being questioned by Mr. Neal and Mr. Ben-Veniste of the Special Prosecutor's office. The first question inside the bracket: "When was the first time you had ever heard or discussed with anyone the subject of clemency with respect to any of the persons who were indicted or who might have been indicted in connection with the Watergate break-in?"

He says it was a conversation he had with the President around the week of the Fourth of July.

Then on the next page, he says it was a long rambling conversation—

We talked about the Watergate defendants and I raised the point with the President that Presidential pardons or something of that kind inevitably would be a question that he would have to confront by reason of the obvious political aspect.

He says:

He expressed the firm view that for what he considered to be very sound reasons, he would never be in a position to grant a pardon or any form of clemency in this case.

And it was on the basis of that, he says, that he agreed this ought not to be a subject that was ever brought to his door; that it was something that should just be excluded from his consideration.

On the next page, the lawyer for the Special Prosecutor's office said:

Why did you believe at that time * * * that it was inevitable or it was likely that this subject would come up for discussion?

Mr. Ehrlichman says:

Well, I didn't think it was inevitable, but I thought it was certainly a hazard in this thing for the President.

On page 71, he is asked—

I take it that this came in the flow of some other conversation about the Watergate matter?

Answer. I am sure it did, but I can't tell you what it was. It was in the setting of the Watergate episode then being quite removed from the President and his candidacy and the reelection effort by reason of the identity of these defendants being so removed from an hierarchy or from the White House.

I think I raised this in the sense that there were only a couple of ways that it could ever be imputed on the President * * *

He was asked if that was prior to the election. He said:

No, not prior. I was not thinking of prior. I was thinking of sometime off in the future. In other words, we were looking at it in the long haul * * *

Question. And you both wanted to make sure that no one representing the White House would have any discussion linking the President to any question of clemency or leniency with respect to these arrested defendants?

Answer. That is the way we generally ended up with an understanding to that effect. It was not this great huge thing at that time at all. It was just the first time I can ever remember a discussion on that subject.

And you say that there was no suggestion from any person at any time before that that this might be an area that you ought to discuss either prophylactically or otherwise?

Answer. Not that I can recall, no.

Then on page 127, he said that Dean had not told him he had a conversation with Liddy and Liddy had said it was Liddy's operation and Dean further had said it was just a matter of time before the Justice Department picked Liddy up.

Mr. Ehrlichman says he is not sure when he was told that. He said:

I think what is fair to say is that I am not sure and I am not. I don't intend to testify contrary to any prior testimony, but I do have to give you the best sense of my recollection * * *

Question. But your best recollection is that it was between June 19 and the fourth of July.

Answer. Someplace in that area.

Question. Now when was the first time that you were aware that the President was aware that Liddy had an involvement in this business?

Answer. I don't know.

Question. Was the President aware of that on the fourth of July?

Answer. I haven't any idea.

Question. Was he aware of it before the 10th of July, based on your long and very complete discussions with him on the 6th, 7th, and 8th of July?

Answer. I don't know.

Question. Was he aware of it at the time you had a discussion about the possibility of executive clemency coming up for some of these people?

Answer. I don't know. I don't recall discussing Liddy with the President, or his indicating his awareness of Liddy to me on any specific occasion.

Question. But you have testified that you were aware of it, say by July 6, or that week of July 4, when you—after July 4 when you had these conversations with the President, you were undoubtedly aware from Dean that Liddy had admitted to Dean that it was Liddy's operation, is that correct?

Answer. I would assume so.

And are you testifying that you were aware of that and you had conversations with the President about the possibilities of executive clemency for these people, and you just omitted to tell the President the general counsel for the Finance Committee had admitted to Dean that it was his operation?

No, I am not testifying to that.

As I say, the rest of this discussion is on executive clemency, we have reproduced all the Presidential statements that have any bearing on this for the committee. I would think the committee would want to read them themselves in detail. Tab 12.

Mr. DAVIS. Tab 12—In or about July 1972 and at other time subsequently, John Dean told H. R. Haldeman that CRP was raising funds for those involved in the break-in at the DNC headquarters.

Mr. DEAR. This question was raised before lunch, whether or not Mr. Haldeman knew about fundraising activities and the payments to the defendants and their attorneys. At 7.3, which is the grand jury testimony of Dean, Dean said that he had advised Mr. Haldeman.

At 12.1, 3046, Mr. Haldeman testifies in response to a question by Mr. Dash:

When did it come to your attention * * * that certain funds were being raised to pay for the legal fees of the defendants?

Mr. HALDEMAN. Sometime in the period shortly after the Watergate break-in and I am not sure again of any specific date or occasion on which I became aware of that, but I was told at some time in that period and I was told at other times subsequently, I am sure by John Dean, and I think possibly also by John Mitchell, that there was an effort by the committee to raise funds to pay for the legal fees

and for family support of the defendants who had been arrested in the Watergate burglary.

Mr. DASH. Now, when you received that information from Mr. Dean and/or Mr. Mitchell, did you raise any question. Did you ask why Mr. Mitchell, who was heading up the campaign, and Mr. Dean, who was counsel to the President, would be involved in raising funds to pay for legal fees and families of burglars and wiretappers?

No; I did not. This was incidental information that I received and dismissed. I did not pursue it in any way.

Well, did you consider that if that became public, that it might be a matter of embarrassment to the campaign?

No, I did not consider that.

Then at the bottom of that page, he said this matter was not submitted to him for approval, but was just transmitted to him as information. Tab 13.

Mr. DAVIS. Tab 13—on July 5, 1972, John Mitchell was interviewed by agents of the FBI and stated to them that he had no knowledge of the break-in at the DNC headquarters other than what he had read in newspaper accounts of that incident. Mitchell has testified that prior to the time he was interviewed by the FBI, he received a report from Robert Mardian and Fred LaRue of a conversation they had with Gordon Liddy in which Liddy described his role in the Watergate break-in; but he was not sure this information was correct when he was interviewed by the FBI on July 5, 1972, and he was not volunteering any information under any circumstances.

Mr. DENNIS. I think that is a fair—you do not have to expand on that. That is the testimony of John Mitchell in two places—the fact that he was not sure that the information he had been told by his subordinates was correct, and that he furthermore was not giving out any information anyway.

Mr. DOAR. Tab 13.2 is pertinent to discussions between Mr. Mitchell and Mr. Haldeman and Mr. Ehrlichman. Underneath the bracket—

Mr. DASH: Was there a concern expressed by you to Mr. Haldeman or Mr. Ehrlichman concerning whether stories would be revealed during this campaign?

This is at page 1625—

Mr. MITCHELL. I think that we all had an innate fear that during the campaign that they might be revealed. I recall discussing it specifically in that area but I am sure we must have had a mutual concern about the subject matter.

When I read that, I wonder whether there was a “do not recall” that is not in the transcript, but the way the transcript is is “as I recall discussing it specifically in that area.” I say that only because in most of Mr. Mitchell’s testimony, that is the only place that I remember he ever said I recall discussing it specifically. Generally, it is always I do not recall discussing it specifically.

Mr. SEIBERLING. Mr. Chairman, if the point is going to be raised, we cannot leave it dangling.

Mr. DOAR. We will check it. We will check it.

Then at the next point, on page 1626, Mr. Dash asked him, in the top third of the page—

Would you say that whatever coverup was taking place to this point, concealment and not volunteering information, had to do with actually preventing the so-called White House horror stories rather than Watergate break-in?

Mr. MITCHELL. That was certainly my belief and rationale, and I would believe

the people in the White House, certainly some of them, might well be involved and certainly would have similar interests.

Tab 14.

Mr. DAVIS. Tab 14, on or about July 7, 1972, after several unsuccessful efforts by Ulasewicz to deliver funds for the Watergate defendants to attorneys and after telephone conversations among Kalmbach, LaRue, and Dean, instructions were given by Kalmbach to Ulasewicz to contact Howard Hunt's attorney, William Bittman. After that contact was made and after approval by Kalmbach of \$25,000 payment, Ulasewicz delivered \$25,000 to Bittman by placing an unmarked envelope containing the money on a shelf in the lobby of Bittman's office building.

Mr. DOAR. These paragraphs relate to the distribution of money. Rather than go through the testimony that is behind these statements of information, let me say that they describe a very elaborate scheme of secrecy, aliases, phone booths, paper sacks, meetings in cars where cash is counted; and this all being carried on by the President's personal lawyer receiving directions from either Mr. LaRue and Mr. Dean and then passing on the money to Mr. Ulasewicz, who had formerly worked in the White House—who had formerly worked under Mr. Caulfield, who had worked in the White House prior to the 1972 election campaign for Mr. Haldeman and Mr. Ehrlichman.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, has Mr. Bittman ever offered testimony in any proceeding relative to his role?

Mr. DOAR. Yes.

Mr. WIGGINS. I see. It will be referred to later?

Mr. DOAR. Yes.

Mr. WIGGINS. I see. Thank you.

Mr. DOAR. Tab 15.

Mr. RANGEL. Mr. Chairman, on the minutes where you have the bracketed area, there seems to be a space missing. Is that deliberate?

Mr. DOAR. I do not know the answer to that, Congressman. That is page 51 of 14.03.

The CHAIRMAN. Mr. Rangel, would you kindly repeat the question?

Mr. RANGEL. My question is that in section 14.3, page 51 of the transcript of the Senate hearings, the third sentence of the bracket, "Mr. Bittman informed me blank had received an envelope" and it seems as though a name has been omitted, but they do not say anything.

Mr. DOAR. That is the way we received the document. We will look into that and get back to you. Tab 15.

Mr. DAVIS. Tab 15, in mid-July 1972, upon instructions from Kalmbach, Ulasewicz delivered \$40,000 to Howard Hunt's wife for the benefits of the Watergate defendants and \$8,000 to Gordon Liddy by sealing these moneys in unmarked envelopes and placing them in lockers at Washington National Airport. These payments were made from the funds Kalmbach previously had obtained from Stans and delivered to Ulasewicz. In the usual situation in making such deliveries to Mrs. Hunt, Ulasewicz informed Kalmbach of the amount requested and Kalmbach in turn discussed the amount with Dean

or LaRue, and then instructed Ulasewicz to make the delivery in a specified amount.

Mr. DOAR. Tab 15.3 is a memorandum from Dorothy Hunt to William Bittman, dated October 2, which reflects that, is an accounting of moneys received for bail and what is termed as "income replacement." It indicates that she had received in July \$88,000 and paid out \$91,000. Tab 16.

Mr. RANGEL. Do we at a later date get a rundown on Mrs. Hunt and the cause of her death?

Mr. DOAR. We do not get a rundown on it. We know Mrs. Hunt was killed in an airplane crash in Chicago.

Mr. RANGEL. It seems as though many people refer to her and I do not recall ever seeing any information. She is referred to as being the brain behind many operations and I think this morning, she was referred to as perhaps the one that knew something about the smoke thing. There is constant reference to her, and she is killed on an airplane. I wondered whether you had an index as to who Mrs. Hunt really was under your cross index file?

Mr. DOAR. Whatever information we have, we will bring to your attention.

Mr. RANGEL. Thank you.

Mr. WALDIE. Mr. Chairman, I see Mr. Bittman is the recipient of this memo from Mrs. Hunt and I can understand Mr. Bittman's attorney-client relationship with Hunt, I guess. But why does Mrs. Hunt account to Bittman for the disbursement of funds to other than Hunt?

Mr. DOAR. Well, the money came to Kalmbach and then to Ulasewicz and then to, in some instances, to Bittman or in some instances to a drop where Bittman picked it up, or in some instances, it went directly to Mrs. Hunt.

Mr. WALDIE. But was it for Hunt? What I am really trying to find out is is there a possibility of no attorney-client relationship to ask Bittman questions?

Mr. DOAR. I think there is.

Mr. WALDIE. That is all I want.

Mr. SEIBERLING. Mr. Chairman.

The CHAIRMAN. Mr. Seiberling?

Mr. SEIBERLING. Mr. Hunt appeared on Buckley's television show last week, an hour long interview, and discussed this very point, the payment of the money and why he felt he was justified in getting it and so forth. I wonder if the staff is going to get a transcript of that television interview, because it may have some bearing on this question.

Mr. DOAR. We will do that.

Mr. SEIBERLING. Thank you. That was on National Educational Television.

Mr. WALDIE. Have you questioned Bittman at all?

Mr. DOAR. Yes.

Mr. WALDIE. Will you at some time give us the proceeds of that questioning?

Mr. DOAR. Yes.

Mr. WALDIE. When will that be?

Mr. DOAR. It is available to you in our files. We did not question Mr. Bittman under oath. It could be that at the appropriate time, the

committee would have to decide whether to have Mr. Bittman brought as a witness or not.

Mr. WALDIE. If I were to come over, I could see what you have on that?

Mr. DOAR. Yes. Tab. 16.

Mr. DAVIS. On July 19, 1972, Porter falsely stated to FBI agents that the funds he had paid Liddy were for the purpose of conducting lawful political intelligence activities.

Mr. DOAR. I have already explained Mr. Porter's involvement. This just is a fact that he testified falsely. We can say falsely because he pled guilty to an information that was subsequently filed on January 14, 1974, and a guilty plea was received on January 28, 1974. This was brought by the Special Prosecutor's office. Tab 17.

Mr. DAVIS. Tab 17, on July 20, 1972, Magruder falsely stated to FBI agents that he had authorized Sloan to permit Liddy to spend up to \$250,000 to gather intelligence information for use in attempting to prevent disruption at the convention and at speeches by surrogate celebrities and political figures. Magruder has testified that he had volunteered at one point to take the heat but that the decision was that if it got to him it would go higher.

Mr. DOAR. That testimony, 17.1, page 802, I have already called to the committee's attention, but on 803, when Magruder is talking about immediately before his grand jury appearance, he said:

We had still not come up with the money amount, but other than that, we basically had developed the guidelines to the story, yes.

Mr. DASH. When you were interviewed by the FBI, did you tell this false story to the FBI?

Yes, I did.

Tab 18.

Mr. DAVIS. Tab 18, on July 19, 1972, Herbert Kalmbach met with Dean and LaRue in Dean's EOB office. At that meeting LaRue, in Dean's presence, delivered cash to Kalmbach for use in meeting the commitments to the Watergate defendants. That evening Kalmbach delivered this cash to Ulasewicz in a hotel room in New York City. The amount of this cash is uncertain, being reported as \$20,000 by LaRue and as \$40,000 by Kalmbach. On or about July 20, 1972, Kalmbach was asked by either Dean or LaRue to raise from outside contributors additional funds for the Watergate defendants. On July 27, 1972, Kalmbach received another \$30,000 from LaRue in LaRue's CRP office. These payments to Kalmbach were made by LaRue out of \$81,000 in cash he had received from Stans and Sloan early in July, when Stans decided that it would be unwise to retain such a cash sum in CRP custody.

Mr. DOAR. Apparently, there were substantial amounts of cash in the presence of the Finance Committee To Re-Elect the President on or about April 7, 1972. The committee will recall that \$350,000 of this cash was transferred to Mr. Haldeman's unquestioned control by it being delivered to Mr. Strachan, who delivered it to Mr. Butterfield, who delivered it to Mr. Lilly, his friend, and it was placed in a safe deposit box out in Virginia. This is another \$80,000 in cash that was available to Mr. Stans at that time; \$40,000 of it was in the possession of Mr. Sloan in his desk, or at home, and \$40,000 of it was in

the possession of Mr. Stans because neither of them wanted to keep the whole amount of cash on their person or in their possession.

This statement of information relates how Mr. Stans decided that this money should be turned over to Mr. Kalmbach to be used to pay for additional funds for the Watergate defendants. This occurred early in—the tab No. is 18.4, Mr. Kalmbach's testimony. He said this occurred in Mr. Dean's office in the Executive Office Building, the transfer of the moneys.

Then in 18.5, Mr. Dean testifies how he participated in this transfer and advised Mr. Haldeman and Mr. Ehrlichman about it.

That is the end of volume 1.

Ms. HOLTZMAN. I have a question. I notice that on some of the other figures, you have summaries of 302 forms, but you do not have that with respect to paragraph 13 regarding Mr. Mitchell. Is that in your files, a summary of the FBI 302's?

Mr. DOAR. I do not think it is. We got those 302 summaries from the SSC. To get that summary, we would have to get that from the FBI. We may attempt to get that.

Ms. HOLTZMAN. If you think that is advisable, it may be worth looking into.

Mr. DOAR. Do we have the new book yet?

Mr. Chairman, I think if we could just take a 5-minute recess while we get this next book.

The CHAIRMAN. All right.

[Recess.]

Mr. EDWARDS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, when do we next hear a tape and get a transcript?

The CHAIRMAN. The next tape will be heard this evening when we resume at about 6:30.

Mr. EDWARDS. Is that that lengthy one?

The CHAIRMAN. Yes.

Mr. EDWARDS. Why do we not all agree to return those transcripts tonight after we are finished with them and also the others that are in our possession.

The CHAIRMAN. I was going to suggest that since we will have heard the tape, there will not be any need to retain the transcript in our possession and that we return it to the staff for security purposes so that there will not be any possibility of a leak of the materials in that transcript.

Mr. WALDIE. Mr. Chairman, if we act upon my suggestion and release those transcripts to the press, we do not have to worry about that.

The CHAIRMAN. I do not believe we can do that, since the materials in the transcript not only refer to the matters that the White House disclosed, but there are materials that I think as we go along—and not particularly with relation to the transcripts, but I think that they affect the entire presentation. I would hope that we can, just for the purposes of insuring that these transcripts not be leaked, that all we do is return this transcript and nothing else. That simplifies it at this time.

Mr. SEIBERLING. Mr. Chairman? I would like to be heard on that.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Well, it seems to me that as Mr. Dennis pointed out this morning, if we start doing that sort of thing, it is an admission that we are unable to exercise enough self-discipline to observe our rules of confidentiality and it also seems to me that it impairs our ability to study these very voluminous documents that we are being presented with and to be able, to be in a position individually to move along as this investigation moves along. I do not think we can wait and do all our homework after we finish the presentation here. I think we need to have the materials as we get to them. I think it is an imposition on the members of the committee to ask us to give up our ability to deal with these materials as they are presented to us.

The CHAIRMAN. Well, the gentleman knows that he will have heard the tape itself. I do not see the problem in returning the transcripts, because it appears to me that those are the matters that are most susceptible to being leaked. The rest of the material, the rest of the books are being retained by the members and there is no attempt to keep those from the members. I do not suggest that we do.

Mr. SEIBERLING. Mr. Chairman. I have found that you cannot always absorb this on a first reading. I have to read some of this stuff two and three times. I do not know, maybe the transcript will be perfectly clear the first time around, but some of this is not. It is often necessary to relate one set of testimony or transcript to some other document. I do not think we can operate on that kind of restriction.

Ms. HOLTZMAN. Mr. Chairman?

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, would it be possible to move along with the presentation and defer the resolution of this question until the issue is actually before us, which will not be until this evening, when we reach that tape. If the time works that way, it may in fact even turn out to be a moot question depending on the number of interruptions. In the meantime, we will have an opportunity to consider that question.

Obviously, there are some important questions here about how we handle this material, what we make open and what we do not. I think we need to think that through carefully. I think it would be helpful now if we push along with this presentation.

The CHAIRMAN. The Chair has stated that this matter will be taken under advisement.

As a matter of fact, I might mention at this time—and we are not going to entertain any further discussion. We are going to proceed with the hearings, because the question is one that is going to have to be resolved at a meeting. The Chair will be considering that and will call a meeting for that purpose.

However, Mr. St. Clair has already presented me with a letter which suggests that because of the fact that there have been leaks and he believes that they may prejudice the matters that are before us, he, too, is urging this, and I suppose that this is a matter already that the press is aware about, and undoubtedly, members will be asked concerning this. I think that all that we need to do at this time is to state that the matter is going to be considered and the matter is going to be a committee matter that will be discussed at a committee business meeting.

Mr. Doar.

Mr. DOAR. Tab No. 19.

Mr. DAVIS. Tab 19, on or about July 26, 1972, Herbert Kalmbach met with John Ehrlichman in Ehrlichman's office. Kalmbach has testified to the following regarding that meeting: Ehrlichman assured Kalmbach that it was necessary and legally proper for Kalmbach to continue secretly to raise and provide funds for the persons involved in the break-in at the DNC headquarters. Kalmbach asked Ehrlichman to assure him that Dean had authority to direct him in this assignment, and Ehrlichman stated that Dean had that authority, that it was a legally proper project and that Kalmbach was to go forward with it; Kalmbach requested the meeting because he had become concerned whether the secret payments' operation he was conducting with Ulasewicz was a legally proper activity, whether Dean had authority to have Kalmbach undertake that assignment, and whether the operation should be continued; and Kalmbach received the desired reassurance from Ehrlichman. Ehrlichman has testified that he did not give assurances to Kalmbach.

On April 19, 1973, just prior to Kalmbach's testifying before the Watergate grand jury, he and Ehrlichman discussed by telephone their July 26, 1972, conference. Ehrlichman, tape recorded that conversation.

Mr. DOAR. Tab 19.2 is Mr. Ehrlichman's calendar for July 26 and shows that he met with Mr. Kalmbach.

Tab 19.1 is Mr. Kalmbach's calendar for July. It, too, shows he met on July 26 with Mr. Ehrlichman.

I would like to call the committee's attention to the fact that Mr. Kalmbach, according to this calendar, on the 6th had dinner with Ehrlichman and on the 14th, there is a note with respect to Mr. Ehrlichman.

In the testimony in one of the paragraphs, Mr. Ehrlichman confirms the fact that they met also on the 14th. This is the meeting where Mr. Kalmbach testified that he went to Ehrlichman, sought out this meeting because he was bothered about this assignment, the secrecy of it, the use of aliases, the use of cash, phone booths, papersacks, secrecy, and so forth.

So on page 2105—that is 19.3, he said, about the bottom third of the page:

One, I wanted John Ehrlichman to confirm that John Dean did in fact have the authority to direct me to undertake this assignment.

Second, I wanted him to assure me as to the propriety of this assignment. In any event, I requested a meeting with John Ehrlichman.

Then he says he was at his office at 3:30 on July 26.

Then he testifies that before April 7, Mr. Haldeman and Mr. Ehrlichman had indicated to him, since he had been involved in fundraising activities for a long time that he was going to get out of that, but then he got this urgent call on the 26th of June and had been asked to go out and raise new funds.

He said:

When I first went into that meeting with Mr. Ehrlichman, I told him, you are familiar with this assignment? He said, "Yes I am."

Then he said down at the bottom of the page, he said:

John, I want you to tell me—and you know, I can remember it very vividly because I looked at him, and I said—John, I am looking right into your eyes.

I know Jeanne and your family, you know Barbara and my family. You know that my family and my reputation mean everything to me, and it is just absolutely necessary, John, that you tell me, first that John Dean has the authority to direct me in this assignment, that it is a proper assignment, and that I am to go forward on it.

Then Mr. Kalmbach said Mr. Ehrlichman said, "Herb, John Dean does have the authority, it is proper, and you are to go forward."

Then he said, in commenting on the secrecy, he explained that by saying that but for the secrecy, this whole assignment, getting these funds to these people for this purpose could get into the press and be misinterpreted. And then I remember he used the figure of speech, he said "They would have our heads in their laps," which again would indicate to me that it would jeopardize the campaign.

As I said, Mr. Ehrlichman says that that did not happen. This is at 2569. That is tab 19.4.

He said the reason he knew it did not happen is, "If we had invoked the names of our wives, I am sure I would remember that solemn occasion and I am sorry to say that I do not remember."

He said "I would never in my life ask Herb Kalmbach to do anything that I thought was shady or improper, certainly not illegal. And if Herb Kalmbach had ever said to me "Do you vouch for the propriety or the legality of what I am doing," I would have been very, very slow to make any assurance to Herb without a lot of research to satisfy myself. And that is why I am pretty sure that that kind of request was not made of me and I did not make a response, because I never did have occasion to research it or find out about it."

Then on page 2569, about 10 lines down, is testimony about the discussion of the meeting of the 14th of July, when they first discussed it.

Now, later on, when the President asked Mr. Ehrlichman to make an investigation with respect to the Watergate coverup he—this is at tab 19.5. SSC exhibit No. 77, Mr. Kalmbach was scheduled—we have moved ahead from the middle of July 1972 to the middle of April 1973. By this time, Mr. Dean and Mr. Magruder are talking to the grand jury. Mr. Kleindienst has recused himself. Mr. Petersen has been placed in charge of the Watergate investigation. Mr. Ehrlichman had been conducting an investigation of the matter at the personal request of the President, and Mr. Kalmbach is scheduled to appear before the Watergate grand jury. Ehrlichman and Kalmbach had a telephone conversation on the 19th.

This is exhibit No. 77. I think the members of the committee would want to read this exhibit completely, but I would like to indicate a few points in it.

If you go down the page about to the 12th or 15th line, he says:

Did he tell you about Dean?

Nope.

Well Dean has totally cooperated with the U.S. Attorney in the hopes of getting immunity. Now what he says or how he says nobody seems to be able to divine but he.

This is printed page No. 2215.

MR. JENNER. This is a transcript of a tape recorded conversation that Mr. Ehrlichman took of the conversation between himself and Mr. Kalmbach, just before Mr. Kalmbach was to go before the grand jury.

Mr. DOAR. Then he says, Kalmbach says: "The whole enchilada?"
And Ehrlichman says:

He is throwing off on Bob and me heavily.

KALMBACH. He is?

EHRLICHMAN. Yep.

KALMBACH. He is.

Ehrlichman relates how he has retained counsel.

Kalmbach says, "Oh, you have?"

Ehrlichman says:

Very good and who agrees with me that it is the remotest kind of nonsense but the point that I think has to be clarified, that I am going to clarify if I get a chance, is that the reason that Dean had to come to me and to Bob where you were concerned is that we had promised you that you would not be run pillar to post by Maurice Stans.

Kalmbach says, "And also that you knew I was your friend and you knew I was the President's attorney."

Ehrlichman says, "Sure." And Kalmbach says, "Never do anything improper, illegal, unethical, or whatever."

Ehrlichman says "Right."

Then if you skip down to the last answer by Mr. Ehrlichman, this is information indicating that Mr. Haldeman had knowledge of this series of secret payments:

And so it was necessary for Dean to come to me and then in turn to Bob and plead a very urgent case without really getting into any specifics except to say you had to trust me, this is very important, and Mitchell is up his tree or, you know, I mean is really worried; he didn't use that phrase, but he is really exercised about this. And I said, well, John, if you tell me it is that important, why, yes.

Then Kalmbach says:

You know, when you and I talked and it was after John had given me that word, and I came in to ask you, John, is this an assignment I have to take on? You said, yes, it is period and move forward. Then that was all that I needed to be assured that I was not putting my family in jeopardy.

And Ehrlichman answers "Sure."

The CHAIRMAN. The committee will recess for 15 minutes for the vote.

[Recess.]

The CHAIRMAN. Come to order.

Mr. RAILSBACK. Mr. Chairman, I wonder if there is any sentiment on the committee for coming in an hour earlier on Tuesday instead of going tonight.

I thought there was a consensus on the elevator, but I am not sure.

The CHAIRMAN. Before we find out if there is any sentiment, I would like to point out that even if we go until 5:15 and recess until 6:30, we have a considerable amount of material to go through. That is not going to help us at all, to come in an hour earlier on Tuesday.

I would suggest that in the interest of trying to expedite this, we devote ourselves to trying to get as much done as we possibly can tonight. It is a terrible imposition on the staff and there are problems that develop. We can only work for a period of time, and I think that the members will appreciate the hour or hour and a half in order to get something to eat and then go forward.

Mr. MARAZITI. Mr. Chairman, would it be possible for the members of the committee to have a copy of the letter addressed to you by Mr. St. Clair before we conclude tonight?

The CHAIRMAN. No; I do not think it is going to be possible. The letter is addressed to me. I certainly will take that under advisement, and before the members go off in various directions, I think that I first want to study the letter before I make it available to the members.

Mr. MARAZITI. My point simply is so we could have an opportunity to consider what is set forth therein if we are going to take some action on it for or against.

The CHAIRMAN. You will have sufficient time to consider that when and if we take that matter up.

Mr. HOGAN. Mr. Chairman—

The CHAIRMAN. We are going to go until 5:15 now and then recess until 6:30 and hope that we get through the rest of the book and hear the tape.

Mr. HOGAN. Mr. Chairman, do you know how long?

The CHAIRMAN. Probably until about 8:30.

Mr. MEZVINSKY. Mr. Chairman, I understand your position regarding the letter from Mr. St. Clair. My question is has Mr. St. Clair released this letter to the press?

The CHAIRMAN. I have no control over whether or not Mr. St. Clair will or will not release it.

Mr. MEZVINSKY. If the letter is public and if it has been released to the press, I would submit that the members should at least have the opportunity, before we walk out of here so we can at least be privy to it before we walk out of this room and are inundated by 150 members of the press.

So the question is if it has in fact been released to the press, there is no reason to keep it confidential.

The CHAIRMAN. Well, all I can state to the committee is that the letter was hand delivered to me about an hour and a half or so ago. I have discussed this with Mr. St. Clair very briefly and told him that this matter would be studied and taken under advisement and we would be discussing it with him. Then the committee would take appropriate action at the appropriate time at a business meeting.

Mr. MEZVINSKY. I do not question that, Mr. Chairman, and I think that is proper. But are we going to have to wait until we read about it in the newspapers, or can we at least walk out of here prior to having to look at the evening editions?

So I guess the question is really simple, has this letter been released to the public and to the press by Mr. St. Clair?

The CHAIRMAN. Well, insofar as I know, Mr. St. Clair merely delivered me the letter. I would assume that the letter had not been disclosed to the press.

Mr. MEZVINSKY. Well, is it proper, Mr. Chairman, to ask Mr. St. Clair whether or not he in fact gave this letter to the press, either at the time he gave it to you or prior to that time? Is that proper?

The CHAIRMAN. No, I would think it is not appropriate to address any matter to Mr. St. Clair at this time. Mr. Doar.

Mr. DOAR. Mr. Chairman, I was reading from 19.5—

Mr. DANIELSON. Mr. Chairman, there is a gentleman seated over by the wall, I do not recognize him. Is he a member of our staff?

The CHAIRMAN. Mr. Marshall is our security officer.

[Applause.]

The CHAIRMAN. Just so that the members will not fret, I have just instructed that the letter be reproduced. It will take a little time and we will distribute it to the members. Mr. Doar.

Mr. DOAR. We were on 19.5, which was the SSC exhibit No. 77, which was Mr. Ehrlichman's taped conversions with Mr. Kalmbach on the 18th of April 1973.

I was asked during the recess whether or not Mr. Kalmbach knew that the conversation was being taped. It is our information that he did not.

Down at the middle of the page there, page No. 2216, Ehrlichman said, "See he is the House lawyer."

Then Kalmbach "Yep, exactly. And I just could not believe that you and Bob and the President just too good friends to ever put me in the position where I would be putting my family on the line.

"It is just unbelievable, unthinkable. Now, shall I just—" I am on page 2216, right at the middle of the page. "I just could not believe that you and Bob and the President just too good friends to ever put me in the position where I had been putting my family on the line.

"And it is just unbelievable, unthinkable. How shall I just—I will just if I am asked by Silver, I will just lay it out just exactly that way."

Ehrlichman says, "Yeah, I would not haul the President into it if you can help it."

Kalmbach says, "Oh, no, I will not."

Then down at the bottom of the page, the fifth line from the bottom, you see Kalmbach says, "You said this is something I have to do and——"

And Ehrlichman says, "Yeah, and the reason I said that, as you know, was not from any personal inquiry but was on the basis of what had been represented to me."

Mr. Kalmbach says, "Yeah, and then on—to provide the defense fund and to take care of the families of these fellows who were then"—then on page 2217, at about the 10th line down, Mr. Ehrlichman said to Mr. Kalmbach, "They will ask you"—I presume that is the prosecuting attorneys before the grand jury—"to whom you have spoken about your testimony and I would appreciate it if you would say you have talked to me in California because at that time I was investigating this thing for the President."

Kalmbach says, "And not now?"

Ehrlichman says, "Well, I would not ask you to lie."

Kalmbach says, "No, I know."

Ehrlichman, "By the point is"——

Kalmbach, "But the testimony was in California."

Ehrlichman says, "The point is. Well, no, your recollection of facts and so forth."

Kalmbach says, "Yes, I agree."

Ehrlichman says, "See, I don't think we were ever seen together out there but at some point I am going to have to say that I talked to O'Brien and Dean and Magruder and Mitchell and you and a whole lot of people about this case."

Kalmbach says, "Yeah."

Ehrlichman says, "And so it would be consistent."

Mr. OWENS. Mr. Doar, do we have the recording of this conversation?

Mr. DOAR. No.

The CHAIRMAN. Have we asked for it? Under whose control is it? Does Mr. Ehrlichman have it?

Mr. DOAR. Mr. Ehrlichman has it.

Mr. OWENS. I think it would be very helpful to hear it. Can we ask for it, subpoena it, whatever is necessary?

Mr. DOAR. We can ask for it.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies, and gentlemen, I would like to ask you if you would turn back to the information paragraph, which is the first sheet under this tab. Mr. Doar and I last night agonized over the paragraph. To remain true to our representation to you, we would at least try not to include in the paragraph any conclusion of staff with respect thereto and we did our level best in that connection, realizing, however, that this tab contains a classic example of witness testifying differently, though faced directly with the conflict. And then there appears, to the joy of the trial lawyer in many cases, a previously recorded conversation. So this is a very important item and you have an instance in which a witness, Mr. Kalmbach, testifies quite directly he looked him in the eye and referred to his family and he said, "I want assurances that this assignment is a valid one that has been given to me by Mr. Dean; I want to know that it is legally proper because I am worried about my family, and I want to know if it is alright for me to go forward."

He says Mr. Ehrlichman gave me that assurance, and the testimony is there.

Then you have Mr. Ehrlichman testifying, though he knows what the conversation was in which he says directly that that was not so.

Then you have the tape recorded conversation which Mr. Doar and I concluded, for the purpose of the factual statement, it was our judgment—it is your judgment ultimately, of course—that the assurance was given by Mr. Ehrlichman.

Now, one other point of information. In the March 1 indictment returned against Mr. Ehrlichman, Mr. Mitchell, et al., this particular incident is one of the counts against Mr. Ehrlichman for perjury.

Mr. FLOWERS. But this is a 1973 conversation and your statement as to the conflict is a 1972 conflict.

Mr. JENNER. The 1972 conflict is the testimony of Mr. Ehrlichman and Mr. Kalmbach as to what occurred back at that time.

Mr. FLOWERS. Right.

Mr. JENNER. The tape is a tape of a conversation that occurred just before Mr. Kalmbach went in to testify before the grand jury.

The CHAIRMAN. Mr. Waldie?

Mr. WALDIE. To followup Mr. Owens question, I recall somewhere along in the transcripts that the President provided, when Mr. Mitchell was coming down to the White House for some conversation about something, Ehrlichman, I think, said he had to go to his office and gear it up—I gather to gear it up to record Mr. Mitchell. Is there a record-

ing system in Ehrlichman's office and does this come off of that recording system? Or how frequently does Ehrlichman tape people and do you know how the taping is done? Does he have just a little phone tape of his own or what?

Mr. DOAR. I do not know. My belief is that some of the assistants to the President had recording devices on their phones so they could record telephone conversations.

Mr. WALDIE. Well, do we know if that works all the time or just at his option? How did we discover this one, I guess is the first question I want to know.

Mr. DOAR. It was subpoenaed.

Mr. WALDIE. I know it was subpoenaed, but how did we know it existed?

Mr. DOAR. Well, I suppose that the Senate investigators served a subpoena on Mr. Ehrlichman to produce all materials with respect to conversations with Mr. Kalmbach. Mr. Kalmbach told them about this conversation.

Mr. WALDIE. What I am trying to find out is, if we are trying to resolve other disputes involving Mr. Ehrlichman and phone calls from his office, if we serve a subpoena on Mr. Ehrlichman, have we reasonable assurance that we could find other tapes. Is this the only tape we have discovered of Mr. Ehrlichman?

Mr. DOAR. Mr. Ehrlichman had a machine in his office that he could hook up to his dictaphone and to his phone and record conversations. He did this intermittently. He taped two conversations on the 14th of April. We have some of those.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, before we leave this tab, I have a question with respect to the recorded conversation reported on 2216. That is in 19.5.

Right in the middle of that page, Mr. Kalmbach says, "Yep, exactly, and I just could not believe that you"—meaning Ehrlichman—"and Bob and the President just too good friends to ever put me in the position where I'd be putting my family on the line."

So far as I know, that is the only place where Mr. Kalmbach has referred to the President in language which could suggest that the President put him in this position of collecting money. It is susceptible of that possible interpretation. My question, counsel, is whether or not that impression has been confirmed or denied by any other testimony which I could cross reference here?

Mr. DOAR. By Mr. Kalmbach, you mean?

Mr. WIGGINS. Yes.

Mr. DOAR. No; we do not know of any other.

Mr. JENNER. We do not know of any other, and probably also, Congressman Wiggins, at least speaking for myself, I did not gather that and I do not have that impression.

Mr. WIGGINS. It is not a very strong one on my part, either.

Mr. HOGAN. Mr. Chairman.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, you will recall the amendment I offered to the rules of procedure about the staff finding facts and the big

debate on that. The kind of thing that troubles me recurs through all of the statement, the paragraphs under the tabs.

For example, the staff's statement says "And Kalmbach received the desired reassurance from Ehrlichman." What you should say is Kalmbach said he received. The point is it is stated down below that Kalmbach received the reassurances. It should say that Kalmbach says he received the reassurance, because Ehrlichman denies it.

Mr. SEIBERLING. If you will read the second line, it all starts out—

The CHAIRMAN. I think that counsel had better continue with his presentation. I am sure that the members will ultimately decide whether or not, if there has been some misinterpretation insofar as detailing information, whether or not the staff has done this for any reason whatsoever, and I am sure that each member will have to consider this. I do not find—frankly, I am not going to comment at this time, but I do not find that this is a matter that we can discuss now. Our rules of procedure have been adopted. The method of detailed information which was to be presented is being presented in that fashion. I think we had better get on.

I might urge the members once again and the Chair is going to insist that these questions be addressed to the Chair and counsel not answer until the Chair recognizes a member. I do not intend to, unless it is going to be for purposes of clarification; otherwise, those of us who are preaching that we want to get on with this business are going to be here until doomsday. Mr. Doar.

Mr. DOAR. Tab 20.

Mr. DAVIS. Tab 20, on or about August 5, 1972, Kalmbach met in California with Thomas Jones, chairman of Northrop Corp., who previously had contributed and had offered to provide additional funds for the President's campaign. At that meeting, Jones delivered to Kalmbach, a wrapped package of cash—\$50,000, according to Jones, and \$75,000, according to Kalmbach. Shortly thereafter, Ulasewicz came to California and Kalmbach covertly delivered \$75,000 in cash to Ulasewicz for the Watergate defendants.

Kalmbach has testified that a few days thereafter, he advised Ehrlichman that in connection with his assignment, he had raised \$75,000. Ehrlichman has testified that he places this conversation with Kalmbach in April 1973 rather than August 1972.

In August 1972, in accordance with the procedures previously described—paragraph 15—Ulasewicz made two payments to Mr. or Mrs. Howard Hunt—\$43,000 and \$18,000—by placing unmarked envelopes containing the money in lockers at Washington National Airport.

Mr. DOAR. This paragraph just continues to relate the payment of money secretly by Kalmbach and Ulasewicz and sets forth another source of money, cash, from Thomas Jones. Tab 21.

Mr. DAVIS. Tab 21, on August 10, 1972, Herbert Porter testified falsely before the Watergate grand jury that the money he had paid Liddy prior to the Watergate break-in was for the purpose of obtaining information regarding plans by radical groups to disrupt political rallies.

Mr. DOAR. Tab 22.

Mr. DAVIS. Tab 22, on August 18, 1972, Jeb Magruder testified falsely before the Watergate grand jury that CRP had paid Gordon Liddy to

conduct lawful intelligence projects. Magruder has testified that he felt it important that the story of the Watergate break-in did not come out in its true form, and he volunteered to work on the coverup story. Prior to his grand jury testimony, Magruder met at different times with John Mitchell and John Dean. Magruder has testified that Dean, Mitchell and others helped prepare him for his grand jury appearance. Mitchell has testified that he attended a meeting with Magruder and others where Magruder outlined the nature of the testimony that he was going to give.

Dean has testified that he informed H. R. Haldeman and John Ehrlichman about Magruder's proposed story and Herbert Porter's proposed corroboration of it. Ehrlichman has denied that he was so advised. Magruder has testified that his reason for testifying falsely was that "If it had gotten out that people like Mr. Mitchell and others had been involved at that point in time, I honestly thought that his—the President's—reelection would be probably negated.

Mr. DOAR. Dean testifies at 22.5 that he advised Mr. Haldeman and Ehrlichman of this proposed testimony of Mr. Magruder and Mr. Magruder denies this at 22.6. Tab 23.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I notice that you have the testimony of John Ehrlichman denying that he was advised. Do you have any testimony with respect to Mr. Haldeman's version of that?

Mr. DOAR. No. There is none.

Mr. DAVIS. Tab 23, on August 28, 1972, Egil Krogh, an assistant to Ehrlichman who had established the Plumbers' organization—the White House Special Investigations Unit—appeared and testified falsely before the Watergate grand jury that he had no knowledge that Howard Hunt had traveled to any place other than Texas while he was working on the declassification of the "Pentagon Papers". He also testified falsely that he knew of no trips to California "for the White House" by Gordon Liddy.

Mr. DOAR. Tab 24.

Mr. DAVIS. Tab 24, in the summer of 1972, Dwight Chapin, the President's appointments secretary, met with Donald Segretti. Segretti, whom Chapin had employed to disrupt the campaigns of candidates for the Democratic Presidential nomination, had previously been questioned by the grand jury investigating the Watergate break-in and by the FBI. Segretti has testified:

Mr. Chapin told me to cease all activities. I asked Mr. Chapin if I should make an accounting of funds, that I did have some money that was left over. Mr. Chapin told me, no, to keep whatever money I had remaining as a bonus; and I had been through a lot of problems, with the FBI and the grand jury appearance.

The amount involved was several thousand dollars. They also discussed the possibility of Chapin's finding Segretti a job.

Mr. DOAR. There will be further facts with respect to Chapin that Segretti presented to the committee later. Tab No. 25.

Mr. DAVIS. Tab 25, on or about September 12 or 13, 1972, at 12 noon, John Mitchell, John Dean, and Jeb Magruder met. Magruder outlined the false story he was planning to give before the Watergate

grand jury regarding the meetings among Mitchell, Magruder, Dean, and Gordon Liddy in January and February 1972 at which political intelligence and electronic surveillance had been discussed. Mitchell did not express any disagreement. Thereafter, Magruder appeared before the grand jury and testified falsely.

Mr. DOAR. Magruder subsequently plead guilty to an information that was brought against him with respect to this testimony. At Tab 26.

Mr. DAVIS. Tab 26, on September 1, 1972, John Mitchell testified before the Watergate grand jury that he had no prior knowledge of illegal CRP political intelligence operations or of Gordon Liddy's political intelligence gathering activities.

Mr. DOAR. This fact with respect to the grand jury testimony is found in the indictment that was returned on March 1 by the district court grand jury. It sets forth in question and answer form in the indictment what these questions were.

Mr. JENNER. Mr. Chairman.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. That is the indictment to which I referred earlier when I called your attention to that previous paragraph.

Mr. DOAR. Tab 27.

Mr. DAVIS. Tab 27, on September 15, 1972, Gordon Liddy, Howard Hunt, and the five persons arrested in the DNC Watergate offices were indicted for several offenses, including burglary, unlawful entry for the purpose of intercepting oral and wire communications, and conspiracy.

Mr. DOAR. Tab 28.

Mr. DAVIS. Tab 28, on September 15, 1972, John Dean met with the President and H. R. Haldeman. They discussed the Watergate investigations and the indictment returned earlier that day. The President discussed with Haldeman and Dean the way Dean had handled the matter. The President said:

Well, the whole thing is a can of worms. As you know, a lot of this stuff went on. And you, and, you, and the people who worked (unintelligible) awfully embarrassing. And, you, and, you, but the, but the way you, you have handled it, it seems to me, has been very skillful, because you—putting your fingers in the dike every time that leaks have sprung here and there, (unintelligible) have the people straighten the (unintelligible).

The grand jury is dismissed now?

Mr. DOAR. Tab 29.

Mr. DAVIS. Tab 29, on September 17 or 18, 1972, Kalmbach was directed by Dean or LaRue to deliver \$53,500 to Mrs. Howard Hunt for the benefit of the Watergate defendants and to deliver the remainder of the funds he had received to LaRue.

On September 19, 1972, after having been directed by Kalmbach to make these deliveries, Ulasewicz delivered \$53,500 to Mrs. Hunt by placing the cash in an unmarked envelope in a locker at the Washington National Airport, and delivered \$29,900 to LaRue by placing the cash in an unmarked envelope on a shelf in the lobby of a Howard Johnsons Hotel near LaRue's residence.

On September 21, 1972, Kalmbach, LaRue, and Dean met in Dean's office to reconcile Kalmbach's and LaRue's records of Kalmbach's disbursements of the funds he had obtained from Stans, LaRue, and Jones. These records showed that as of September 21, 1972, Kalmbach

had disbursed \$187,500 for the benefit of the seven defendants and \$29,900 to LaRue. Kalmbach said that he did not wish to continue his role concerning the payments to the defendants. At the end of the meeting, Kalmbach burned his records in an ashtray on Dean's desk.

Mr. DOAR. Just to have the chronology straight, the five persons that were indicted—the seven persons that were indicted—Liddy, Hunt, and the five persons arrested—was on September 15. Then 2 days later, or 3 days later, Kalmbach decides that he does not want to have anything more to do with this and he signs off, so to speak, with respect to the secret transfer and payment of money to the defendants.

The tabs behind this paragraph relate that and relate that after the accounting was made, the records were burned in an ashtray on Dean's desk. The only tab I wish to call to your attention is tab 29.5 which is another memorandum from Dorothy Hunt.

This memorandum begins to talk in terms of the facts, in the second paragraph—no, the first paragraph:

I informed Mr. Rivers that Mr. Liddy had telephoned me the previous night and informed me that since he would be in court of the 19th, he would appreciate it if I could handle any contact for him.

Mr. Rivers said he had not arranged anything about Mr. Liddy—a fact I am not going to pass on to Mr. Liddy as I feel it will anger him, and asked me to spread the \$53,500 out to include Mr. Liddy and his attorney as well as Mr. McCord. He concluded that he would be in touch with me again when he could and repeated that this amount was all he was able to scrape up on such short notice. I thanked him.

Mr. RANGEL. Mr. Chairman, who was Mr. Rivers again?

Mr. DANIELSON. Ulasewicz.

The CHAIRMAN. Proceed.

Mr. DAVIS. Tab 30, in October 1972, CRP attorney Kenneth Parkinson told Fred LaRue and John Dean that William Bittman, Hunt's attorney, needed additional money for legal fees. Using the alias "Mr. Baker," LaRue contacted Bittman and caused cash—\$25,000 or \$20,000 to be delivered to Bittman's office. The package was received at Bittman's office in Hunt's presence. LaRue has testified that he understood the money was for legal fees for Bittman.

Mr. DOAR. Tab 31.

Mr. DAVIS. Tab 31, on November 10, 1972, John Dean met with Donald Segretti in Palm Springs, Calif. Dean taped a conversation in which Segretti described his disruption of the campaign of candidates for the Democratic Presidential nomination during the period he was employed by Dwight Chapin. On November 11, 1972, Dean was called from Palm Springs to Key Biscayne, Fla., where H. R. Haldeman and John Ehrlichman had accompanied the President. Dean flew to Florida and reported on Segretti to Haldeman and Ehrlichman.

Segretti has testified that in mid-November 1972, Dean offered him a position in Montego Bay, Jamaica, at a salary of about \$35,000 per year.

Mr. DOAR. Tab 31.1 is the testimony of John Dean. At the bottom of 965, he said:

. . . I was asked by Haldeman and Ehrlichman to meet with Segretti to determine the extent of the involvement that Chapin and Strachan had had with him.

He went out and had the interview with Segretti and on November 11, he got a call from Todd Hullin, Mr. Ehrlichman's assistant,

requesting that he come to Florida. Dean flew to Florida, met with Mr. Haldeman and Mr. Ehrlichman, played the tape.

Then he testified—then he went to Camp David on November 15 and played another tape on another subject which we would discuss later. Then the subject of Chapin's remaining at the White House came up.

This is tab 31.1.

Mr. JENNER. About half way down page 966.

Mr. DOAR. At Camp David, the subject of Chapin remaining at the White House came up and he learned that the President had made a decision, based on the information that had been imparted to Haldeman and Ehrlichman that Chapin would have to leave the White House staff. Tab 32.

Mr. DAVIS. Tab 32, in November 1972, Howard Hunt telephoned Charles Colson. Colson recorded the conversation. Hunt discussed with Colson the need to make additional payments for the defendants in *U.S. v. Liddy*. Hunt said:

This is a long haul thing and the stakes are very, very high and I thought that you would want to know that this thing must not break apart for foolish reasons.

We are protecting the guys who are really responsible . . . but at the same time, this is a two-way street and as I said before, we think that now is the time when a move should be made and surely the cheapest commodity available is money.

Colson gave a tape recording of the conversation to John Dean. Dean has testified that on or about November 15, 1972, he met with John Ehrlichman and H. R. Haldeman at Camp David, Md., and played the recording for them. Ehrlichman has testified that he does not recall ever hearing the recording.

Dean also has testified that immediately after the meeting at Camp David, he met with John Mitchell regarding the defendants' money demands and played the recording for him.

Mr. DOAR. Tab 32.1 is the transcript of the tape recording between Hunt and Colson. Colson has testified that he thought he ought to make a record of that conversation. Apparently, he had the same kind of recording device or a somewhat similar recording device on his phone in his office in the White House.

Exhibit 152 at page 3888 is this recorded conversation. This is in late November 1972.

Running down the first page to the first long response by Colson to Hunt, Colson says:

Before you say anything, let me say a couple things. One, I don't know what is going on here, other than, I am told that everybody is going to come out alright. That's all I know. I have deliberately not asked any specific questions for this reason. That I have my own ideas about how things will turn out and I am not worried about them and you should not be, but I've always thought if it came to an open trial, that I would want to feel free to come into it and characterize the testimony and etc. etc. This way, the least details I know of what's going on in some ways the better.

Hunt says:

I appreciate that.

Colson says:

If you follow. So I have tried to stay out of asking specific questions and it is very hard for me to do that for the reason that you're an old and dear friend and am sure you regret the day I ever recommended you to the White House.

Hunt says:

Not in the least, Chuck, I am just sorry that it turned out the way it did.

Colson says:

Well, I am, too, obviously and I hope to hell you had nothing to do with it and I've clung to that belief and have told people that and if you did have anything to do with it, I am God damn sure it is because you were doing what you were told to do.

Hunt says:

That is exactly right * * *

Colson says:

Cause you are a loyal soldier obviously and always have been * * *

Hunt says:

Would you be willing to receive a memorandum from me?

Colson hesitates.

Hunt says:

* * * I would think that you could receive this memorandum, read it and destroy it.

Colson says, "Nope."

Then he goes down in the next long answer and says:

The problem is, you see, I don't want to get into the position of knowing something that I don't now know for the reason that I want to be perfectly free to help you and the only way I can help you is to remain as completely unknowing as I am. See, my problem—let me tell you the problem. Is that—I could do you a lot more good by not—by honestly being able to testify that I don't know, I just don't know the answer and I don't. And right now I don't know anything about the Goddam Watergate. Now, supposing Teddy Kennedy holds his hearings and I get called up there. Well, I can't refuse to answer and I would not. I'd answer I just don't know. I have no idea what happened and I don't.

Then on the next page, Hunt asks:

* * * to get back to the beginning here is because of commitments that were made to all of us at the onset have not been kept and there's a great deal of unease and concern on the part of seven defendants and, I am quite sure, me least of all. But there is a great deal of financial expense that has not been covered and what we have been getting has been coming in very minor dribs and drabs and Parkinson, who's been the go between with my attorney does not seem to be very effective * * *

Colson says:

Okay, don't tell me any more.

Hunt says:

These people have really got to * * * this is a long haul thing and the stakes are very, very high and I thought that you would want to know that this thing must not break apart for foolish reasons.

Colson says:

Oh, no, everybody——

Hunt says:

While we get third, fourth hand reassurances, still the ready is not available. That is the basic problem.

Colson says:

I follow you. Okay, you told me all I need to know and I can—the least I know really of * * * what happened the more help I can be to you.

Somewhere down near the bottom of the page, Hunt says:

I would hope that somewhere along the line the people who were paralyzed initially by this within the White House could now start to give some creative thinking to the affair and some affirmative action for Christ sake.

Colson says:

That's true.

And Hunt then said at the top of 3890 that—

I think now is the time for it and we expect it now and we want it and the election is out of the way, the initial terror of the number of people has subsided. Though some people have already left the administration and that is all to the good. So now it is pared down to a point where a few people ought to really be able to concentrate on this and get the goddamned thing out of the way once and for all because I don't want to—

I can't read that word—

bore you with what it's been like, but it hasn't been pleasant for any of us.

Colson recognizes this, and then in the next line within the brackets Hunt says:

Well, that's fine for we're protecting the guys who are really responsible, but now that—and of course that's a continuing requirement, but at the same time is a two-way street, and as I said before, we think that now is the time when the proof should be made, and surely the cheapest commodity available is money.

And then if you turn to the next page, I won't go through this, but there is some more conversation about Colson saying:

Don't tell me, don't tell me. I'm better off if I don't know.

And then Hunt in his testimony before the SSC confirms that he had this conversation with Colson. That is at 32.2. And then Colson's statement which was presented to the SSC is a long statement in 32.3. And he testifies how, "After the election the pressures"—this is 32.4 at 969, the pressure was increasing greatly. Colson recorded this conversation. Dean testified "I took it up to Camp David, played it for Haldeman and Ehrlichman." And then Dean took it to New York. This is at 970, and he met with Mr. Stans at the Metropolitan Club and he played the tape for Mitchell. And he said:

"I recall that he had only one reaction to the tape, and that it was to the effect that it was certainly a self-serving tape for Colson and he wondered what the hell Hunt was talking about with regard to Mitchell having perjured himself. I informed Mitchell that Ehrlichman and Haldeman had heard the tape and requested that he do what he could to solve the problem. I received no instructions or really any indication at all at that time from Mitchell regarding the matters that Hunt had raised in his conversation with Colson.

Tab 32.5 Mr. Ehrlichman's testimony that he didn't recall ever hearing the tape that Mr. Dean described.

And Mr. Mitchell at 32.6 says he knew about the telephone conversation between Mr. Hunt and Mr. Colson which covered the subject, and then he talks about a letter that Mr. Hunt got, sent to Mr. Colson, and then later on, in March of this year, there were oral communications from either Hunt or his attorneys relating to requests for legal fees which were communicated to the White House.

Tab 32.7—Mr. Mitchell verifies that Mr. Dean did come to New York to talk to him about the demands for money. And I believe 32.8 is Mr. Mitchell's calendar for November 15, 1972, which indicates

that Mr. Mitchell left his office at 1:45 to meet with Mr. Stans and Mr. Dean. Tab No. 33.

Mr. DAVIS. Tab 33—on or about December 1, 1972, William Bittman, Howard Hunt's attorney, gave a folded paper to CRP attorney, Kenneth Parkinson. Parkinson gave it to John Dean or Fred LaRue. In or around early December 1972, Dean had a discussion with Haldeman about CRP's need for funds for the defendants in the *United States v. Liddy* during which Haldeman approved the transfer to CRP of a cash fund of \$350,000 in campaign contributions which had been placed at the disposal of the White House at Haldeman's direction prior to April 7, 1972. The first portion of between \$40,000 and \$70,000 was delivered by Haldeman's assistant, Gordon Strachan, to LaRue. Shortly thereafter, LaRue delivered \$40,000 to Bittman by messenger. In January 1973, the remaining \$280,000 was delivered to LaRue. In January 1973, FCRP Director Maurice Stans approved the transfer of \$14,000 or \$17,000 in campaign funds to LaRue.

Mr. DOAR. Members of the committee will remember during the first day of the presentation the \$350,000 left the Finance Committee to Re-Elect the President on or about the 7th of April and was transferred to Mr. Haldeman's unquestioned discretion in the White House. The money was delivered to Strachan who delivered it to Butterfield, who delivered it to a friend, and it was kept there until after the election in 1972.

The material behind this tab relates to information with respect to the fact that there was a continuing need for money for the defendants, and Mr. Haldeman approved the transfer of this money back to the committee, or not to the committee but to LaRue for payment to the defendants. There was no—the transfer was made in two bits, one of \$40,000 and one of the balance, I believe, making a total of approximately \$350,000.

Tab 33.2 is John Dean's testimony before the grand jury in November 1973 where he was asked if Mr. Mitchell in the first week of December contacted him about using some of the White House cash to meet the defendants' demands. His answer was, "Yes, he did."

"How did that come about?"

He said, "Well, the demand had reached a crescendo, and there was no other money available."

And then down at the bottom of the page he said, "Did you then consult with Mr. Haldeman about this?". He has already testified that Mr. Mitchell was aware that the funds were under Mr. Haldeman's control, and he said:

Did you consult with Mr. Haldeman about this?

Yes, I did.

Can you tell the grand jury the substance of whatever conversation you had with Mr. Haldeman about this matter?

Well, I told Mr. Haldeman while I didn't like the procedure I had no alternative to offer him because the demands at this point were very acute, and Mr. Mitchell had made the request and didn't have any suggestion to make.

I said it's my understanding that they will pay the money back as soon as they have raised the additional money themselves, and that the White House fund will then be kept intact. He said I should go ahead and tell Strachan to deliver the money to Mr. LaRue.

For this purpose?

For this purpose.

And Mr. Haldeman's testimony on January 30, 1974, before the grand jury, he is questioned by the grand jury by the attorney from the Special Prosecutor's Office about this at 33.3, page 124 where he said:

Well, you knew that \$350,000 was being utilized as a source of payment for these funds, did you not?

He said:

Yes. I didn't consider that a White House source. I considered that a campaign source that had been held for White House use during a period, and then was turned back to the Campaign Committee.

At that time that it was utilized, the money was under your control; was it not?

No.

You authorized its transfer to Mr. LaRue?

That's correct.

Knowing that it was to be used to pay the defendants?

I think not knowing, but knowing that there was a problem that he was concerned about which was to provide these funds for the defendants.

And then if you go on to the top of page 126 where he said, the question:

Was there any other understanding other than the fact that it was transferred for the purpose of being paid in whole or in part as needed to the defendants?

No, there was no other understanding. That's correct. I have already said that.

Mr. LaRue relates how he got the \$40,000 first or \$50,000 and then later he got \$280,000 in January, and then Gordon Strachan relates how he pays, and this is at 33.5, how he takes \$40,000 in cash over to Mr. LaRue's apartment, and Dean, Mr. Dean had said:

Well, it's time to get the balance back to the Committee. Why don't you call Mr. LaRue.

And so Strachan called LaRue and said, LaRue said:

Could you drop it by my apartment?

And he said yes. And then John Dean told him to get a receipt for the amount.

And so I went to Mr. LaRue's apartment, gave him the money, asked for a receipt. And Mr. LaRue said, "You will have to talk to Dean about getting a receipt. I will not give you one."

And he was asked:

Is this at a time when in your statement you indicated Mr. LaRue put on gloves to take the money out of the bag?

And Mr. Strachan said, "Yes, that was the occasion."

Tab. 33.6 is Mr. Dean's testimony with respect to this transfer of money for the payment for the defendants, or to the defendants in the case involving the Watergate break-in.

And then 33.7 is Mr. Stans' testimony about replacing some of the \$350,000 that had been withdrawn so that the money could be returned intact.

Tabs 33.8 and 33.9 are political matters memorandum which you have already been presented with respect to the transfer initially of the \$350,000 to Mr. Haldeman's "unquestioned personal contro Tab 34.

Mr. DAVIS. Tab 34, on December 31, 1972, Howard Hunt wrote to Charles Colson requesting that Colson meet with Hunt's attorney, William Bittman. Hunt said, "There is a limit to the endurance of any man trapped in a hostile situation and mine was reached on December 8." Hunt's wife had been killed in a plane crash on that date. On January 2, 1973, Colson wrote to Dean forwarding a copy of Hunt's letter. The transmittal slip from Colson stated, "Now what in the hell do I do?" On January 3, 1973, John Ehrlichman, Colson, and Dean met to discuss Hunt's letter. Ehrlichman and Dean had testified that the three discussed the subject of executive clemency. Colson has stated he met privately with Dean and discussed the need to give personal reassurance to Hunt. Later that day and on the following day, Colson met with Bittman. According to Colson, Bittman told him that if Hunt went to jail, Hunt did not want to stay in jail beyond the end of the year, and Colson replied that he could not make any representation, but that as long as he was around he would do everything he could to help Hunt.

Mr. DOAR. Tab 34.1 is Mr. Colson's memorandum or a copy of it to Dean in which he says, dated the 1st or 2d of January, "Now what in the hell do I do?" And then behind that is Mr. Hunt's letter to Mr. Colson in which he indicates that "there is a limit to the endurance of any man trapped in a hostile situation."

Tab 34.2 is Mr. Ehrlichman's log indicating a meeting on Wednesday the 3d at 7 o'clock with Mr. Colson and Mr. Dean.

Tab 34.3 is Mr. Dean's testimony with respect to executive clemency on that day.

Mr. Ehrlichman's testimony is at 34.4, and then Charles Colson, the statement of Charles Colson with respect to this is at 34.5. I think the committee members would want to read all of this testimony. Tab 35.

Pardon me, 34.6 is a Colson memorandum on March 23, 1973, for the file, and this is on March 23 at 2:15 when Bob Haldeman called Colson and asked what representations he had made to Howard Hunt with respect to the commutation of his sentence.

Colson said, I told them I had made no representations, that I had not seen Howard Hunt since the Watergate, that I had seen his lawyer twice, perhaps three times. Bob asked what I had told Bittman and I simply said I told him essentially that I considered myself Hunt's friend and I would do anything anytime I possibly could for Hunt. Bob asked whether I told Hunt that his sentence would be commuted before Christmas, and I said no, I had not, that his lawyer had come to me and said that Hunt did not want to go to jail, that he was going to jail, but didn't want to stay in jail beyond the end of the year. I told Bittman that I had no control over that, that I couldn't make any representations, but that so long as I was around I would do anything I could to help Hunt, and that I felt that he had been punished enough, and that he should not be subject to further punishment. I told Bob that I was very clear in what I had said to Bittman and that, in fact, I wrote it down so there would never be any misunderstanding, that I had made very explicit memorandums for the file and that I advised Ehrlichman and Dean of the conversations since I had been asked by Dean to see Bittman.

Bob asked whether I had ever used anyone else's name in the conversation and I said no that I had not. He asked whether Hunt might have the impression from my conversation with Bittman that he, Hunt, would not serve beyond the end of this year in prison, and I said he might well have drawn whatever conclusion he wanted to from my having said that I would do anything that I could to help him, having said that in response to the specific point that Hunt did not want to serve beyond the end of the year.

However, Bittman, in any conversation with him, understood fully that I was not in a position to say anything more explicit than what I did say.

Mr. MEZVINSKY. What is the date of that memorandum?

Mr. DOAR. That memorandum was March 23, 1973.

Mr. MEZVINSKY. And what is the day?

Mr. DOAR. The meeting is on January 3, 1973.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. On the Ehrlichman log, it indicates, and this is 34.2, that Ehrlichman on the 3rd had a meeting with Colson, and then on the 4th he met with the President. Have we subpoenaed—and then on the 5th he met with Colson and again meets with the President. Have we subpoenaed those Presidential conversations?

Mr. DOAR. My memory doesn't—whether or not they are on the 47 conversations or not I cannot tell you.

Mr. JENNER. I cannot either.

Mr. RANGEL. My point is not the legal question as to whether we subpoenaed, but obviously, Colson is having conversations with Hunt and Bittman, and it just seems that right after these conversations he is meeting with the President, and I thought—

Mr. SEIBERLING. No, Ehrlichman.

Mr. RANGEL. No, Ehrlichman. I meant he is meeting with Colson and Ehrlichman is meeting with the President. I was wondering whether any thought had been given to their recorded conversations?

Mr. DOAR. I would just like to look into that. I do not have the justification memo with me, Congressman, and if I can answer that question this evening I will do it so I can tell you what the status of it is.

Mr. RANGEL. Thank you.

Mr. DOAR. Tab 35.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, there is a reference on 34.6 to a memorandum that Colson made contemporaneously with his conversation with Mr. Bittman. Do we have any such memorandum?

Mr. DOAR. No, we don't have that memorandum.

Ms. HOLTZMAN. Have we asked for it?

Mr. DOAR. No, we have not asked for it. I don't think so. No.

Ms. HOLTZMAN. Do you think it would be desirable to do that?

Mr. DOAR. Well, the problem is whether Mr. Colson would produce it or not. That is the question. Tab 35.

Mr. DAVIS. Tab 35. Between January 3 and January 5, 1973, John Caulfield, a friend of James McCord, and former assistant to John

Dean, delivered to Dean a handwritten copy of a letter Caulfield had received from McCord. McCord's letter stated "If Helms goes and the Watergate operation is laid at CIA's feet, where it does not belong, every tree in the forest will fall * * * just pass the message that if they want it to blow, they are on exactly the right course."

Mr. DOAR. The material behind tab 35 sets forth the letter, and Mr. Dean's, Mr. McCord's and Mr. Caulfield's testimony with respect to it, and it shows that at 35.4 and 35.5. Tab 35.5 is Mr. Caulfield's testimony who is a staff assistant to Mr. Dean during an earlier period. He was on the White House staff.

That is the end of that book.

The CHAIRMAN. I understand, Mr. Doar, that the next book will not be ready until sometime after 5 or a quarter after 5?

Mr. DOAR. That is correct.

The CHAIRMAN. And so I think we will recess now until 6:30.

[Whereupon, at 4:55 p.m. the committee was recessed to reconvene at 6:30 p.m. this same day.]

EVENING SESSION

The CHAIRMAN. Mr. Doar, since we have a quorum present we will proceed.

Mr. DOAR. Mr. Chairman, Congressman Thornton called to our attention paragraph 2.2 in which we have reproduced a page from Mr. Mitchell's testimony where it said, "Magruder lied to Mr. Mitchell." And at a later place in the hearing Mr. Hamilton corrected this and said that this was a typographical error. What it should have said was, "Mr. Magruder said to Mr. Mitchell." We will furnish this correction in the morning or next Tuesday morning.

The CHAIRMAN. That will be fine. Thank you, Mr. Thornton.

Mr. Doar. Paragraph 36.

Mr. DAVIS. Tab 36. On January 11, 1973, Hunt pleaded guilty to all counts of the indictment against him in *United States v. Liddy*. The remaining defendants, except for Gordon Liddy and James McCord, pleaded guilty to all counts against them on January 15, 1973.

Mr. DOAR. Paragraph 37.

Mr. DAVIS. Tab 37. On January 12, 14, and 25, 1973, offers of executive clemency were made to McCord by Caulfield at the direction of Dean.

Mr. DOAR. This is no evidence of any direct authorization from anyone with respect to these offers of clemency. We have set forth the fact that they were made, and that's all of the evidence we have on that subject. Paragraph 38.

Mr. DAVIS. Tab 38. In January 1973, LaRue discussed with Dean payment to Gordon Liddy's attorney, and shortly thereafter delivered \$20,000 to Peter Maroulis, Liddy's attorney.

Mr. DOAR. Tab 39.

Mr. DAVIS. Tab 39. On January 23, 1973, Herbert Porter and Jeb Magruder testified falsely during the trial in *United States v. Liddy* that Porter had paid Liddy to conduct a program of infiltrating radical groups to obtain political intelligence. Magruder has testified that

he had previously told Haldeman that Magruder would commit perjury and that Porter had been cooperative. Haldeman denies that he was so informed.

Mr. DOAR. Paragraph 40.

Mr. DAVIS. Tab 40. In about January or February 1973 LaRue made payments of \$25,000 and \$35,000 in cash to Howard Hunt's attorney, William Bittman. These funds came from money that LaRue had received from the White House.

Mr. DOAR. This is the \$280,000 that was transferred back from Mr. Haldeman's fund. Or part of that fund. Tab 41.

Mr. DAVIS. Tab 41, on February 7, 1973, the U.S. Senate, by a vote of 77 to nothing, established the Senate Select Committee on Presidential Campaign Activity "to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting either individually or in combination with others in the Presidential election of 1972, or in any related campaign or canvas." The authorizing resolution "directs the select committee to make a complete investigation and study" of activities which "have any tendency to reveal the full facts" in respect to 16 specified topics, including the break-in, the electronic surveillance at the DNC headquarters, the payment of money or the use of coercion, threats, or other means to conceal evidence relating to the break-in, Presidential campaign sabotage, Presidential campaign fundraising, and the concealment, suppression, or destruction of evidence relating to matters within the committee's jurisdiction.

Mr. CONYERS. Mr. Chairman, I have a question. Was this committee authorized to inquire into the matters with regard to the President of the United States himself? The reason that I ask that question is because so much of our material does, in fact, turn upon as a support mechanism of the hearings that emerge from this select committee. And I think that we might discover that there was some careful, if not explicit, understanding that that investigation was at least originally not to inquire into the activities of the President himself. Do you have any information in that regard?

Mr. DOAR. Congressman, the only resolution, the only information I have at this time, is the resolution which says, "to inquire into any, to the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons." That is all.

Mr. CONYERS. I am aware of the language, too. But I think that we ought to consider at least what the actual ramifications of the inquiry were, and it seems that at least originally they were conducted in a way to exclude an inquiry into the President's own activities.

Mr. DOAR. All right. Paragraph 42.

Mr. DAVIS. Paragraph 42, on February 9, 1973, H. R. Haldeman sent John Dean an "Eyes Only" memorandum. Mr. Haldeman wrote:

Obviously, the key on the Ervin committee is the minority staff and more important the minority counsel. We have "got to be sure we get a real tiger, not an old man or a soft head," and although we let the committee membership out of our grasp, we have "got to find a way to be sure we get the very best man we can for counsel."

He directed Dean to have the Attorney General "order the FBI project on the 1968 bugging" so as to gather the data on whether the President was subject to bugging during the 1968 campaign. He also

stated that, "Mitchell should probably have Kendall—president of the Pepsi-Cola Co.—call DeLoach—former FBI Assistant Director now working for Mr. Kendall—in and say that if this project turns up anything that DeLoach hasn't covered with us, he will, of course, have to fire him."

Mr. DOAR. At paragraph 42.3, Mr. Dean said that he did not look at these memorandums until several days after the meeting and was rather surprised that Haldeman would state in writing specific instructions regarding his thoughts in perpetuating the Watergate tactics or the coverup by a counteroffensive against the forthcoming Senate hearings. Dean said, "What had happened by this time was that the coverup had become a way of life at the White House, and having made it to this point, those involved were becoming careless and more open about it."

Paragraph 43.

Mr. DAVIS. Tab 43, on February 10 and 11, 1973, H. R. Haldeman, John Ehrlichman, John Dean, and Special Counsel to the President Richard Moore met at San Clemente and at Haldeman's cottage at Rancho LaCosta, Calif., to discuss strategy for the hearings of the Senate Select Committee on Campaign Activities. The meeting was called because the President wanted to know what planning was being done for the hearings and what strategy should be adopted with respect to the White House position on executive privilege and other similar matters. The meetings involved between 8 and 14 hours of conversation. It was agreed that the CRP rather than the White House would take primary responsibility for the defense on Watergate-related matters, and that John Mitchell should be asked to coordinate these activities. According to Ehrlichman, there was discussion of possible dilatory tactics with respect to the hearings of the Senate Select Committee on Campaign Activities. One tactic considered was monetary assistance to the attorneys for the Watergate defendants in possibly seeking judicial delay of the hearings. It was agreed that Moore would go to New York to speak with Mitchell about the group's discussions and Mitchell's role in preparing for the hearings.

Mr. DOAR. Now, the material behind this tab is quite detailed with respect to the recollections of the four men that attended these long meetings out in California. Mr. Haldeman, Mr. Ehrlichman, and Mr. Dean have been well identified for the committee through the process of the presentation. Richard Moore, the other counsel for the President, was not or has not been as well identified and has not been as much a participant in the events leading up to this meeting. Mr. Moore said there has been a difference in recollection with respect to how much the matter of additional payments to the defendants was the subject of the meeting. Mr. Dean said that it was discussed specifically. Mr. Moore said that he didn't think that: although it was discussed, it didn't seem like a major item on the agenda. But Mr. Moore did go to New York and talk to John Mitchell about it following the meeting. And I would just like to refer the committee tonight to 43.3, which is Mr. Haldeman's testimony of that meeting at page 2890. Mr. Haldeman says that:

Mr. Dean in his statement in a number of instances substantially misinterpreted the intent or the implication of things that might have been said at the

meeting. Also I believe he has overlooked one of the principal purposes of the meeting which was a discussion at great length of how to develop some way to learn the entire Watergate story—including the other activities that were by then bunched together as Watergate—and get it out in its totality and accurately. This was considered as one of the best ways to counteract the potential of adverse publicity arising from a drawn out public hearing. The theory was that putting all of the facts out in one place at one time would give the American people a more accurate picture of the truth than would the drawn out process of hearing one witness at a time over an extended period.

Tab 43.5 is Mr. Moore's testimony, and you will see at the bottom of page 1941 where he refers to the fact that Mr. Dean, of course, has testified to a discussion of money. "His recollection differs from mine. And again I said the brief mention of money made at this time may have had a different significance to a person with Mr. Dean's knowledge of the circumstances than it had to a person with my lack of knowledge." He does recall that there was, that some of the lawyers for the defendants—he said. "I can't be precise. They may be needing some more money and did we have any ideas. He said someone should go to John Mitchell and see if John Mitchell could handle this with his rich New York friends."

Mr. BUTLER. Where are you reading?

Mr. DOAR. I am reading at the bottom of 1941.

Mr. JENNER. Printed page 1941 in tab 43.5.

Mr. BUTLER. Thank you.

Mr. DOAR. And the bottom of the page, 1942, Mr. Moore relates how he went up to see Mr. Mitchell, and he said, and I will read from the bottom paragraph on that page:

Knowing Mr. Mitchell as I do, I felt there were several points where he would resist being "programed" by the White House staff, and as I mentioned earlier, I elected to get those out of the way at the start. At the beginning of the discussion I said something like this: "Well, you will be glad to know that the group in San Clemente thinks you should be taking more active interest in the Ervin hearings." I had a somewhat blunt reply such as thank you, and as you know, I am indeed interested and I may be a star witness. I told them it was suggested that it would be most helpful if he could spend part of each week at his law firm's Washington office. He made a chilly reply that he would come to Washington whenever he felt it necessary.

Then Mr. Moore said:

I said something to the effect that I didn't know what it was all about, but it had been suggested that the committee lawyer might be needing more money, and that his White House friend had nominated him for the honor of being a fund raiser. I don't remember his exact words, but I believe he said something like "Tell them to get lost."

Tab 44.

Mr. DAVIS. Tab 44 on or about February 14, 1973, Magruder met with Haldeman and discussed Magruder's possible future employment. Prior to this meeting, Hugh Sloan had told John Dean that because of Jeb Magruder's suggestion to Sloan in June 1972 that Sloan perjure himself regarding the funds paid to Gordon Liddy by CRP, Sloan would testify against Magruder if Magruder should be nominated for a high Government office. On or about February 19, 1973, Dean met with Haldeman, and he thereafter drew up an agenda of matters to be discussed and resolved at a meeting between Haldeman and the Presi-

dent. In that agenda it was stated that Magruder wanted to return to the White House, that Magruder "may be vulnerable (Sloan) until Senate hearings are completed;" and that Magruder "personally is prepared to withstand confirmation hearings." On February 23, 1973, Sloan met with Haldeman. According to Sloan, Haldeman told Sloan that no individual who had become a prominent figure in the Watergate matter would be placed in a high Government position. On March 2, 1973, Magruder met with Haldeman and Dean. At this meeting, Magruder was offered and subsequently accepted the position of Deputy Under Secretary of Commerce for Policy Development, a level IV Government position carrying an annual salary of \$36,000.

Mr. DOAR. Tab 44.8 is Mr. Haldeman's calendar for that period which for the period February 14 showing a meeting with Mr. Magruder; February 23 showing a meeting with Mr. Hugh Sloan; and March 2 showing a meeting with John Dean and Magruder. There is a bracket on the March 2 calendar to show where that is because it is so nearly illegible.

This is the conversation, this information that the inquiry staff had when it requested the committee to authorize a subpoena for the meeting on or about February 20 between the President and Mr. Haldeman when the agenda items were discussed that are found in 44.5. And if you turn to 44.5, this is an agenda that John Dean prepared at the direction of Mr. Haldeman for a discussion with the President. And item 3 is entitled "What to do with Magruder. Jeb wants to return to White House. Bicentennial project. May be vulnerable (Sloan) 'til Senate hearings are completed. Jeb personally is prepared to withstand confirmation hearings."

The President replied that a search had been made for that recording and that there was no—it was not located, not that recording, but that recorded conversation. And during the course of the search I conferred with Mr. St. Clair to try to give him the best information we had as to the exact date of that, and it appeared that it was between February 19 and 22.

Mr. Haldeman's testimony, which is at 44.3 in the book, at page 2890 and 2891 is his comment before the Senate select committee on this agenda. He does not confirm the fact that he met with the President about this. But, if you will see on page 2891 he says, "Third, a question of whether Magruder could have a White House job," and this is at the top of 2891, and it is about the sixth or seventh line down—

Mr. JENNER. Tab 44.4 or 3, I'm sorry.

Mr. DOAR. And he says, "At that time I had already told Magruder that that would not be possible. But, I think the point here was to check that decision with the President to be sure he concurred." And there is no further testimony with respect to that except that subsequently Mr. Magruder met with Mr. Haldeman and he was offered this position as Deputy Under Secretary of Commerce. And furthermore, when Mr. Haldeman met with Mr. Sloan, Mr. Haldeman told Mr. Sloan that no individual who had become a prominent figure in the Watergate matter would be placed in a high Government position.

Tab 44.6 is grand jury testimony of John Dean in which John Dean

relates that he had a conversation with Mr. Haldeman following the meeting that Mr. Haldeman had with the President.

What did Mr. Haldeman say?

Answer. He told me that Mr. Magruder could not come back to the White House. He told me Magruder had wanted to work in some capacity on the White House staff while assisting in the Bicentennial, and that this was just not possible. The President didn't want him back in the White House.

Tab 44.7 is a memorandum from a man named Jones to John Dean and Larry Higby which lists job options for Jeb Magruder. The memorandum is dated February 28, 1973.

Higby is Mr. Haldeman's special assistant located in the office just outside Mr. Haldeman's office on the first floor of the White House. Mr. Jones is the head of the White House personnel office. Paragraph 45.

Mr. DAVIS. Tab 45, on February 22, 1973. H. R. Haldeman asked John Dean to prepare a briefing paper for a meeting between the President and the Attorney General, Richard Kleindienst. Haldeman told Dean not to transmit the memorandum through normal channels, but to hand-carry it to him. Dean prepared a briefing paper stating that Kleindienst would probably like to leave Government to accept an offer he had received from a law firm, but that "Kleindienst is *extremely* loyal to the President and will do anything asked of him by the President." [Emphasis in original.]

The memorandum set forth recommendations for retaining Kleindienst as Attorney General. On February 23, 1973, the President met with Kleindienst from 10:08 to 10:52 a.m. Kleindienst testified that the President asked him to stay as Attorney General until the Watergate situation was over, and discussed Kleindienst's role as liaison to the minority members of the Senate select committee.

Mr. DOAR. Referring to the memorandum that is set forth in the statement of information at 45.1, you will note this is a memorandum that Mr. Dean prepared for Mr. Haldeman February 22, and it is the briefing paper for the President's meeting with the Attorney General. And in the second paragraph under background, there is the statement:

Kleindienst is less than enthusiastic about helping to solve some of the tough problems related to the forthcoming Watergate hearing. He doesn't want to get himself involved in any controversy at this time.

And the fourth paragraph:

Kleindienst is *extremely* loyal to the President and will do anything asked of him by the President.

Paragraph 46.

Mr. DAVIS. Tab 46. Dean has testified that prior to February 27, 1973, that he told Ehrlichman that he would not be able to assert executive privilege since he had so little personal contact with the President. On February 27, 1973, the President met with John Dean and directed him to assume responsibility for the Watergate related matters. Both Haldeman and Ehrlichman have testified that the President believed that they were spending too much of their time on Watergate matters. Dean has testified that at this meeting the President instructed Dean to report directly to him on all Watergate matters. There was discussion of preparation for the Senate Select

Committee on Presidential Campaign Activity hearings, which included a discussion of the President's meeting with Senator Howard Baker, of executive privilege, of the minority counsel to the select committee, and whether the White House staff would be permitted to testify before the select committee. Dean testified that the President stated that he would not permit White House staff members to appear before the select committee, but would only permit the answering of written interrogatories.

Mr. DOAR. Paragraph 46.4 is Mr. Dean's testimony before the grand jury on February 14, 1974. And at page 7 of the grand jury testimony Mr. Dean was asked:

Now, did there come a time on February 27th when you met with the President?

Answer. Yes; I did.

Question. Prior thereto, did you have a conversation with Mr. Ehrlichman in which the subject of executive privilege was discussed?

Answer. Yes; I did.

Question. Would you give us the substance of that conversation?

Answer. The conversation emanated from the likelihood of a rather vigorous set of hearings on the Watergate being pursued by the Senate, and I told Mr. Ehrlichman that there was a good possibility that I could be called, as a lot of people could be called, to appear before the Senate, and there would be no way in the world I thought executive privilege could be invoked. I have never, in fact, discussed this matter with the President or had any dealings with him directly on it, because I felt that it, if it really came to a battle on executive privilege, it would require direct conversation with the President to be protected.

Question. Thereafter, you were called by the President to meet with you?

Answer. Yes; I was.

Question. To meet with him rather, and that occurred on the 27th of February; is that correct?

Answer. That is correct.

Question. Now, do you recall what was said in substance during that meeting, about to whom you ought to report?

Answer. The President told me I should report to him directly on matters relating to Watergate.

Mr. WIGGINS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, back on the other tabs of 46, for example, 46.2, entitled Memorandum of Substance of Dean's Calls and Meetings with the President, "it is indicated that this material came from the White House." Whose recollections are these?

Mr. DOAR. These recollections are furnished by Mr. Buzhardt to the Senate select committee, Congressman Wiggins. There was a number of documents furnished during the Senate select committee to the staff of the committee with respect to conversations between the President and meetings between the President and Mr. Dean.

Mr. WIGGINS. Is it a fair inference that they must be the President's recollections since they came from the President's counsel, and they were the only two people there at the meeting?

Mr. DOAR. No; I don't think that that is a fair inference. I don't know whether or not that is—I don't know that—for example, another document that was furnished by Mr. Buzhardt at that time was a memorandum of the March 21 conversation, and it was this memorandum that counsel, minority counsel for the Senate select committee was using in questioning Mr. Butterfield about how anybody was able to keep such accurate notes of the meeting. And the counsel said to

Mr. Butterfield, well, did one of you sit in the room with the President and take notes, or did after the meeting you go outside and just write up the notes right away. And in response to this question about how did you keep such accurate records, it was then that Mr. Butterfield said, well, we have this tape recording system.

Mr. WIGGINS. With respect to this specific tab, so I understand it, you don't know whose recollection?

Mr. DOAR. I don't know.

Mr. COHEN. Mr. Chairman, could I just follow this line of questioning?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. And ask Mr. Doar or Mr. Jenner, based upon other information that you have accumulated, Presidential notes or memoranda, is it customary for the President, or do you have any knowledge whether he refers to himself as "the President?" In 46.2 it seems to be written by a third person, or it could be by the President referring to himself, but it might give us some indication as to who prepared that. Could you answer that? Do you know?

Mr. JENNER. I think as you listen to the tapes and other materials you will find that the President frequently refers to himself as "the President."

Mr. COHEN. Thank you.

Mr. JENNER. Sometimes, of course, he uses personal pronouns, but he frequently does use the third person.

Mr. DOAR. The additional information on this page was that this information came by telephone from Mr. Buzhardt to Mr. Thompson, and he took it down from just oral information given to him by Mr. Buzhardt. And then afterwards he reviewed it, so that I can't tell you that.

Mr. COHEN. I realize from reading the transcripts that the President often refers to himself as the President and the Presidency. I am wondering in terms of memoranda of the President himself that you have in your possession, or we have in our possession, as to whether there are similar references when the President writes it out in longhand, or dictates it, or whatever, if we have that information.

Mr. DOAR. I can't tell you that. I can't tell you that.

Mr. JENNER. We can't answer that.

Mr. WALDIE. Question, Mr. Chairman.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, I may have forgotten this, but on that first notation on the memoranda—

Mr. JENNER. Mr. Waldie, do you mind talking into the mike?

Mr. WALDIE. On the first notation on the memorandum of September 15, 1972, it says that Dean reported the IRS investigation on Larry O'Brien. I don't recall that in the tape we heard.

Mr. DOAR. Well, that's true.

Mr. WALDIE. Why is that?

Mr. DOAR. Well, I think the reason for that is, it just came to me right now, is that there are 17 more minutes of that tape that were not furnished by Judge Sirica because it was not related to Watergate.

Mr. WALDIE. Are we seeking that conversation, that report?

Mr. DOAR. Well, I think, I think on the basis of what information we have given the committee before that I would be prepared to recommend to the committee that we do seek the entire conversation of September 15.

Mr. WALDIE. I would hope so. It would seem to me to be quite relevant.

Mr. DOAR. Tab 47.

Mr. DAVIS. Tab 47. On February 28, 1973, the President met with John Dean. The following is an index to certain of the subjects discussed in the course of that meeting.

Executive privilege, written interrogatories and the forthcoming hearings of the Senate select committee, transcript pages 1 through 8, 18 through 21, 29 through 30, 33 through 35, 65 through 67.

Wiretapping and domestic surveillance.

Sentencing of seven Watergate defendants.

Clemency and the Watergate defendants.

White House position with respect to Watergate trial and appeals.

Segretti, Chapin, and political intelligence.

Kalmbach as a witness.

White House and Watergate matter.

Role of CRP and John Mitchell and Watergate matter.

Mr. DOAR. Mr. Chairman, now we are ready to distribute the transcript and play the tape.

The CHAIRMAN. Mr. Doar, before distributing those transcripts I would like to suggest to the members that the transcripts I would hope to distribute would serve as an aid to listening to the tape recording. And I would hope, however, that the committee members would then return the transcripts to the staff for their safekeeping. Now, I recognize that some of the members would like to keep this in their possession, but I believe that the Chair, in its discretion, can rule that this is a matter that I think it can properly in his discretion, and I say it is within the Chair's discretion because I think that this is a matter that is only incidental to the efficient conduct of the hearing and, therefore, I am going to—I am going to first seek from the members assurance that they would turn over the transcripts back to counsel for their safekeeping. Otherwise I am not going to distribute them.

Mr. BROOKS. Mr. Chairman, I would have no objection to it. I believe that under the rules that we have agreed to, bipartisan rules, we agree that the chairman and the ranking minority member, the two Republican counsel, Mr. Jenner and Mr. Doar, one for the Democrats and one for the Republicans, and we have lots of Republican lawyers, I want you all to know that, the committee agreed that we would make a cut of the material that they thought was defamatory or would be undesirable, unnecessary, irrelevant, unnecessary to this investigation. And we gave you that authority and we have not had any feeling that you or Mr. Hutchinson, or your counsel have misused it. And I would think that under that procedure, that authority, that precedent, that we have established within this committee, that it would be reasonable enough under these circumstances for you to just abide by an ordinary procedure established by the chairman with the full accord, I assume, of Mr. Hutchinson, and with the full accord, I would think, of the minority ranking member, and do it in that fashion.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I would like to state to the committee that I am in total support of your request, and if you should make a ruling as such, I am prepared to support your ruling.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, I am in entire agreement. I just would like to make certain notes on the transcript as I go. Is it an understanding it would be returned to us with the books as we proceed?

The CHAIRMAN. That is correct.

Mr. BUTLER. All right. Thank you.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I am in complete dissent from the chairman's position. I stated my position on this particular matter when the question was raised this morning. It seems to me very regrettable that the ordinary amenities to be able to deal with the papers in the case and to study them, which are ordinarily extended to counsel, which would normally be extended to members of this committee, should be denied us because a very, very small minority of the committee, unknown to me, are apparently incapable of obeying our own rules respecting confidentiality. Personally I resent the fact that I am deprived of a reasonable chance to proceed normally and to study this matter at my leisure because someone else has violated our rules. And when we get the small minority dictating the course of the investigation, I think we have the thing entirely backwards, and that those in delinquency are, in other words, in effect running the course of the investigation.

I have seen the letter of the counsel to the President, and personally as far as I am concerned, under the circumstances I agree with his letter.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Well, I would like to have had the transcript. I generally agree with the chairman's position if I can get clarification of two points.

First, will Mr. St. Clair be asked to return the transcript?

The CHAIRMAN. Yes. Of course.

Ms. HOLTZMAN. And that will apply to his assistant as well?

The CHAIRMAN. Of course.

Ms. HOLTZMAN. And secondly—

The CHAIRMAN. This applies to all of us.

Ms. HOLTZMAN. Thank you. Well, I wasn't sure that "us" always meant the President's counsel.

Secondly, this doesn't preclude us at a future time from getting these transcripts to take back to our offices?

The CHAIRMAN. No. Of course not.

Mr. WIGGINS. We are not reserving the right to object, are we, Mr. Chairman? Let me ask a question if I may. Do I understand the Chair's contemplated order is that simply for the present time we will return the transcripts to you?

The CHAIRMAN. That is correct.

Mr. WIGGINS. And at some subsequent time we may have access to them for our purposes?

The CHAIRMAN. Yes. Of course.

Mr. WIGGINS. Well, I think that is reasonable under the circumstances. This member, at least, has got more than I can read this week-end before I ever get into this conversation, but at some time, Mr. Chairman, I hope I will have the privilege of reading it carefully at my leisure.

The CHAIRMAN. I am sure the gentleman will have that time.

Mr. SEIBERLING. Mr. Chairman?

Mr. DENNIS. Mr. Chairman, when is that time going to be?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I support the ruling but I have made a request yesterday that counsel be prepared to provide us with a comparison of the transcript from our tape compared to the transcript of the President's, or that the President has provided, and it is my understanding they were unable to do so for this particular listening tonight. So, I do hope that they will get that comparison prepared so that we can look at the two transcripts.

The CHAIRMAN. That is already underway.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Well, I will naturally support the ruling of my chairman, though I have expressed my views on this matter. But, I understand that under the House rules, rather under the rules of confidentiality of the committee, that at any time henceforth that any member wishes to review the transcript he will have access to it?

The CHAIRMAN. I am sorry, I didn't understand.

Mr. SEIBERLING. It is my understanding that under the rules of confidentiality that the committee adopted that any time a member wishes to see the transcript he may do so?

The CHAIRMAN. That is correct.

Mr. SEIBERLING. Thank you.

The CHAIRMAN. The Chair is prepared to rule that all transcripts be returned immediately after, and before we recess tonight.

Mr. DOAR. Mr. Chairman, if the members desire to make notes on the transcripts, and would put their name on the particular transcript, then we would see that they were kept in the file for them, for the individual member.

The CHAIRMAN. The names are on each of the transcripts and the Chair will rule accordingly, that the transcripts will be returned before we recess tonight.

OK, will you please distribute them.

[Short pause.]

Mr. DOAR. Mr. Chairman?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Shelton is going to play the first recording we received from the White House for about 2 minutes and then he will stop and then start over to give a comparison for the members that they wanted.

The CHAIRMAN. This will be our reproduction?

Mr. DOAR. The first one will be the White House, the transcript or the recording that was furnished to us by the White House.

The CHAIRMAN. I see, fine.

[Playing of tape furnished by the White House.]

Mr. MEZVINSKY. Mr. Chairman, point of clarification. Mr. Doar, was that, so I understand it, would you give us—was that the first tape that you received?

Mr. DOAR. That was the tape we received from the White House in response to our letter of February 25.

Mr. MEZVINSKY. OK.

[Playing of tape recording previously referred to.]

The CHAIRMAN. Will the staff kindly pick up these transcripts?

Mr. SARBANES. Where did this conversation take place?

Mr. DOAR. In the Oval Office.

Mr. FISH. Mr. Chairman.

The CHAIRMAN. Mr. Fish?

Mr. FISH. Are we not going to be able to question staff about the transcripts before we surrender them?

The CHAIRMAN. If you have some questions at this time.

Mr. FISH. I just wondered on one principle. There were two cases of deletions running from 11½ minutes to 15 minutes and I was wondering where the deletions occurred and by whom.

Mr. DOAR. The deletions were made by the chairman and the ranking minority member.

Mr. FISH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wiggins, I would like to——

Mr. WIGGINS. I can ask counsel after the hearing.

The CHAIRMAN. We will recess until 8:30 on Tuesday morning.

[Whereupon, at 8:30 p.m., the committee recessed to reconvene at 8:30 a.m., Tuesday, May 21, 1974.]

IMPEACHMENT INQUIRY

Executive Session

TUESDAY, MAY 21, 1974

HOUSE OF REPRESENTATIVES,

COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The committee met, pursuant to notice, at 9:50 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order. Mr. Doar, I wonder if you could at least announce for us the scheduling as you envision it of this presentation and what we can expect for the next few days. I do know and I realize that staff has been working diligently and around the clock to present this material and to prepare it. I know that the preparation is difficult and tedious and time consuming. I would like you to at least try to enlighten the committee as to just what you are confronted with, what we will expect in these next few days.

Mr. DOAR. All right, Mr. Chairman, members of the committee.

This morning, we will present to you about 12 paragraphs, one of which is a recorded conversation on the 13th of March. That recorded conversation will take about 1 hour and 20 minutes to play, so that when we get to, through that recorded conversation or perhaps one or two paragraphs beyond that at the end of the 15th of March, I would expect that that would be a good time, Mr. Chairman, to recess at noon.

This afternoon, we would present the period from the 16th of March through the morning of March 21. On the morning of March

21, there is a recorded conversation that takes about 1 hour and 40 minutes. That is the March 21 morning conversation.

There are also a number of other important paragraphs between the period March 15 and March 21 that we will have to go over. I would expect that that would complete two volumes or not quite this volume and part of a second volume of material.

Tomorrow morning, we would then go into the afternoon of March 21 and the evening of March 21, where there is a recorded conversation that is about 35 minutes and a dictabelted recording of the President's recollections on the evening of March 21, which is about 6 minutes.

Then following that, on the 22d of March, there is a long morning conversation, recorded conversation, again of about 1 hour and 30 or 40 minutes.

Following that March 22 conversation, we have one or two notebooks that will take us up to the 14th of April.

That is the point at which we would expect to stop this week. The period from the 14th of April to the 30th of April involved an analysis of the edited White House transcripts that have been furnished to us, all but three of them, which would come in the period March 22 through April 13. Mr. Jenner and I feel that we would make it easier for the committee if we had an extra few days over this weekend to get that period and those transcripts analyzed as carefully and as responsibly and fairly as we could for the committee.

Also soon as we finish that, which I would expect to take maybe a half day or three-quarters of a day, we would present to the committee the information which we have with respect to the dairy and the ITT matters.

Following that, we would then present to the committee, and this material would be presented, I think, considerably faster, information on domestic wiretapping, the Plumbers, and matters related to the Plumbers' activities and subsequent political intelligence activities in the next few days of the hearing. Mr. Jenner and I have been in touch with the Department of Justice and with the Senate Foreign Relations Committee with respect to information with respect to wiretapping and there are a lot of important decisions that the chairman and the ranking minority member will have to make with respect to how this material will be presented to the committee. We think that it would be wise to have another few days before we present that to you.

Following that, then there is the material that remains following April 30, during the time that the Special Prosecutor was conducting his activities.

Then we will have a number of written reports to submit to the committee on other areas of the investigation that will be coming to the committee during that period for its study. The investigations on personal financing, campaign contributions, are still going forward.

That is the way I see the presentation.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Might I ask Mr. Doar, Mr. Chairman, if there is any particular logic or sequence in revealing books in this fashion? Could he explain that?

The CHAIRMAN. Mr. Doar?

Mr. DOAR. There is no logic. It is just a matter of getting the preparation assembled for you. We hope that we could present next, after this Watergate material, material on the wiretapping and the Plumbers. But I tell you, Congressman Conyers, there are really difficult problems with respect to getting the material and preliminary decisions that the committee has to make that we are having some difficulty working out. We are ready to present the material on the ITT and the dairy matter.

Mr. CONYERS. So there is no particular sequence involved here?

Mr. DOAR. No, sir. It is just—

Mr. CONYERS. Thank you.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, are we scheduling hearings at the conclusion of Watergate, as what I had understood had been the original intent, at the conclusion of the Watergate overview?

Mr. DOAR. There will be initial presentation in these other areas as well.

Mr. OWENS. But the initial presentation of the other areas will be before the hearings going into Watergate?

Mr. DOAR. Before; yes.

Mr. OWENS. Mr. Chairman, is it possible that the Chair would schedule a meeting at which we might consider how we might proceed on a different, more open basis with these hearings prior to the time of getting into all these other materials, or as early as possible? Is the Chair considering doing that?

The CHAIRMAN. Yes; the Chair is considering doing that. But I think from what Mr. Doar has already indicated, the materials that are going to be presented, at least for the next 3 days and possibly more, do, I think, suggest to us that there is going to be included in there the materials from the grand jury proceedings, from the closed sessions of the various committees of the Congress, and other materials, other testimony that do, in effect, have some bearing on some of the cases which, I think, the committee is compelled to proceed with under the rules of confidentiality. It would seem to me that since we do have about, as Mr. Doar has already expressed, about 5 or 6 hours of tapes to listen to, that certainly is not going to be possible this week. We do have other meetings to consider and we are awaiting the reply of Mr. St. Clair, which was to come yesterday, to the request for materials concerning ITT and the dairy industry, that the committee would have to certainly consider what action it would take in the event of the failure of the White House to comply with our request in that area. So a meeting will be scheduled for that.

The Chair, of course, is aware of the fact that some members are interested in going into open or public hearings, but I think this phase, as Mr. Doar has suggested, as he has pointed out, still requires us, as we did adopt a motion and the motion was to proceed during the initial phase of the presentation with closed hearings.

Mr. OWENS. But that initial phase, as I at least interpreted it, Mr. Chairman, meant the Watergate overview and it was thought that it would be concluded in 4 days.

The CHAIRMAN. Well, it was thought that it would be concluded within that period of time and it was contemplated that that would be

the case. I do not think there was ever any scheduling of Watergate and the aftermath and other matters within a period of 4 days. If that was an impression that was created, I think it was a mistaken presentation.

Mr. OWENS. Well, that is the one that I had. I accept the——

The CHAIRMAN. I think it is hardly possible to be able to present it within that period of time.

Mr. OWENS. When the chairman speaks of the first phase, is he talking about Watergate? We will have a chance to reconsider the procedures before we get into the ITT, the bribery matters, the personal finances, and so forth?

The CHAIRMAN. The committee always has that right and any member of the committee who voted on the prevailing side could ask that the matter be reconsidered and the committee could then vote on it.

Mr. OWENS. And there will be a meeting relatively soon at which we might do that.

The CHAIRMAN. Yes.

Mr. OWENS. Thank you, Mr. Chairman.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. I would like to address a question to Mr. Doar.

With regard to the ITT and the dairy industry, I am wondering whether or not you are going to present this committee with the practices that have gone on in other campaigns—for example, on Sunday, the Washington Post carried a big story on the Johnson campaign, as to how contributions were made by the dairy industry that resulted in an increase in dairy price supports and things like that—so we get a picture of the practices that have gone on in the past, or are we just going to get it during this administration?

Mr. DOAR. With respect to the principal focus of the presentation in the dairy matter it is the facts that occurred in a very short period in March. If we find a situation in another administration that is analogous to that, we would, of course, present that to you. We are not making a survey of former administrations nor of this administration with respect to all campaign contributions.

Mr. LATTA. Certainly, you would allude to the fact, since we are making a record here, that in past campaigns, it has been the practice to go out and solicit from business concerns money to help finance a convention in a particular city and that the cities have, over the years, raised this money on their own rather than pick out during the ITT matter that this is something that happened only in this particular year? I think that we want to paint a true picture and I am sure that you want to do likewise.

Mr. DOAR. I agree with that.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I never did get a full understanding of your responses to Mr. Owens. I gathered that when we first voted to close the hearings, it was apparently a continuing motion that most people, I think, understood would be 4 or 5 days of closed hearings. If I understand Mr. Doar's presentation, it could be 2 or 3 weeks more of closed hearings, and that may be the desire and will of the com-

mittee. But at what opportunity will we be able to express a contrary desire or will? Is the Chair going to permit the committee to make a decision to open these hearings somewhere soon?

The CHAIRMAN. Yes, of course.

Mr. WALDIE. When will that be, Mr. Chairman?

The CHAIRMAN. Well, I think after we have had this phase of it out of the way, which is going to take at least, from what Mr. Doar tells me, at least until possibly Tuesday or Wednesday of next week.

Mr. WALDIE. Well, is there any possibility for the committee to have an opportunity to make their will known to the Chair before the expiration of next week?

The CHAIRMAN. I have expressed that I think that at any time, a motion could be made by any member who voted on the prevailing side to reconsider the question that was before the committee, the question having been whether to close the hearings, and the motion to close was adopted. Therefore, it would only be in order for some member who voted on the prevailing side to present such a motion and the Chair would recognize the gentleman for that, or lady for that purpose.

Mr. WALDIE. Just one final question, since I obviously was not on the prevailing side: When would such a motion be in order? At a meeting such as today, it would not, would it?

The CHAIRMAN. No, it would not.

Mr. WALDIE. When would it be?

The CHAIRMAN. The Chair is intending to schedule a meeting, as I stated, and I would hope that the meeting would be for the purpose of considering the action that this committee might take in the event that the White House does not comply with requests that have been made for material concerning ITT and the dairy industry.

Mr. WALDIE. Would that be before the end or the expiration of next week?

The CHAIRMAN. Yes, it would.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I want to say this in my own behalf, at least. I think the manner in which you, Mr. Chairman, have scheduled these hearings and the tremendous progress that we have made with our present agenda and our present system of presentation is providing the most expeditious resolution of this entire hearing. I want to—I do not think we can have 38 people scheduling the work of this committee and I, for one, want to have vested in you that prerogative and want to support any reasonable scheduling of hearings that you propose. Because I am confident that it is in the interest of getting this whole subject over with in a responsible way as promptly as possible. I do not think we can—I think that is the main objective of this proceeding.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, as you know, I delivered a letter to you yesterday and to other members of the committee which raised two points which we do not need to discuss now, but which for reasons there stated, I feel do deserve early consideration by the committee. I was wondering whether, during this period that we are having these hearings, we can look forward to having a business session sched-

uled on which those two matters might be taken up and considered and possibly acted on?

The CHAIRMAN. Well, the Chair wants to advise the gentleman that I do have his letter, we are considering it, but along with the other matters that may be taken up during a business session, we could also discuss that.

I would like, however, to advise the committee, and indeed make a strong suggestion to the committee that we not be diverted from what we are attempting to do now; that is, present in a very orderly fashion material that has been assembled and organized by staff over a long period of time which the committee had impatiently waited for, and now that we have that material, which I think is what we have to focus on in order to one day, as early as we can, make a judgment, consider this first. I would hope that we all recognize that this is a priority matter and I, so far as I am concerned, am going to urge that and I am going to resist over other measures in every other direction.

Mr. DENNIS. Mr. Chairman, may I respond just briefly to that? Because I concur with you as far as getting this work out and I think it is important and it is a good job and I am glad it is being scheduled. The point I would like respectfully to make is that at the same time and during the same period, we need some business sessions on the matters that I have raised because they implement the very thing we are doing here in this presentation and they present problems which need a reasonably early solution in order to determine which way we are going to go in implementing this. I do not think that the things conflict at all in my thinking, but they should be concurrent for those reasons.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Mr. Chairman, is it possible to predict whether or not we will be having evening sessions this week?

The CHAIRMAN. I do not believe so. I think, however, that I can best answer you after we have gone through today, sometime today, and see what point we have reached. Because we will have to get through with this tape of this morning and then the March 21 and then the two other tapes of the 21st, the afternoon and the evening, and then the 22d, which is very long. Then we do have—and that is all going to be—I think we will be able to conclude tomorrow.

Mr. DOAR. Oh, yes. We will be concluded tomorrow.

The CHAIRMAN. That is about 5 hours of listening to tapes. That means uninterrupted.

Mr. RANGEL. Mr. Chairman, my only point is that no matter how much time is necessary, I am certain that all of the members want to spend that time. But since we have to reorganize our legislative and political calendars, it would be of tremendous assistance if we could have some advance notice in the beginning of the week as to what to expect so that we can better man our calendar.

The CHAIRMAN. This is why I have asked Mr. Doar to try at least to give us some estimate.

One of the problems that committee members may not be aware of is the fact that all of these volumes that you see that are presented to you each day are presented in such a way every day because they are being prepared on an almost 24-hour basis to bring this up with the

latest information, to be edited as of late, and these people have been working 24 hours, around the clock, in order to be able to do it. So even though we were to stay in session for a long time, we may not have available to us these materials. Therefore, the presentation would not be the kind that would best serve our purposes. But if we do, when we do have the material available, this is what we are attempting to try to get done, and if it is necessary to schedule evening meetings, we will do so. We will advise you sufficiently in advance.

Mr. RANGEL. We are not working tonight?

The CHAIRMAN. We are not working tonight.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. As one who supports the chairman, who was on the majority side in terms of closing these hearings, I would like to reflect the sentiments of the gentleman from Illinois, Mr. McClory. I will say that the committee is under personal pressure, individually, to continue to justify closed hearings. I had the same impression that the gentleman from Utah did, that at the end of last week or perhaps at some point this week, there would be an opening, in whole or in part, of this presentation. Apparently, that is not coming about. But I would hope that the chairman, after the day's session, could make to the press a daily justification for the closing of the hearings on that day. It would be helpful to us, because almost daily, we have to respond to the press, why are you continuing to close these hearings and prevent the American public from learning what is going on, et cetera? If in fact the presentations early next week are on the transcripts, which are in the public domain, an analysis of those, it would be very hard to close that portion of the hearings to the press. You are analyzing something which is already entirely in the public domain. I would only make that observation.

The CHAIRMAN. Well, that is true, except that we do have other materials which we have received from the grand jury—grand jury reports and other materials received from committees of the Congress through executive session, and these matters are still intertwined and interlaced with the materials that are being presented.

I will be more than willing to advise the press and the media—I know how anxious they are and I know the pressures that are on each individual member to go public. But I would hope that we recognize, and it is regrettable and I want to mention this again, it is regrettable that there was a leak. It is deplorable that it was suggested that possibly the leak was a selective leak from the committee. I do not make any inferences that it came from the committee. I know this material has been in the hands of the White House as well. It is regrettable that anyone would suggest that it came out of here. I am not going to talk about sinister forces or anything of that sort, but nonetheless, I would like to state that I think that it would serve the public interest best if we were to continue to proceed in a manner that I think this kind of an inquiry requires; that is that we have this presented to us and we consider that there is material in here that is going to affect ongoing cases and that has been developed from grand jury proceedings and that in effect could have some prejudicial impact on some rights of defendants and individuals,

and I think that we ought to be concerned about this. The public interest will best be served if we do an orderly and fair job of presenting it without regard to the public pressures that are on us to make this a public hearing. Mr. Doar.

Mr. DOAR. Tab No. 48.

Mr. DAVIS. Tab 48, on February 28, 1973, Senate hearings commenced on the nomination of L. Patrick Gray to be Director of the FBI. Gray testified that he had shown interview reports and other data from FBI Watergate files to John Dean, who had told him that the President specifically charged him with looking into any involvement on the part of White House staff members. Gray offered to open those files to any Senator on either the Senate select committee or Senate Judiciary Committee who wanted to see them.

Mr. DOAR. When Mr. Gray speaks of opening the files, he is talking about 302 forms, which is the expression that the FBI uses for interviews. He limited his access to any Senator on either of the two committees. This, however, was an extension of the practice that Mr. Hoover had followed, as I understand it, in the past.

The second matter that I wish to call the committee's attention to is on the first page, on the cover page, of 48.1. So that the committee just follows the context of the material that is presented, that is just the dates of the hearings, the dates of Mr. Gray's confirmation hearings began on February 28 and then they ran through from the 1st to the 22d of March with hearings on 8 days, the 6th, 7th, 8th, and 9th, the 12th, 20th, 21st, and 22d. The dates of those hearings and the attention that those hearings were given in the public press are pertinent to your inquiry. Tab 49.

Mr. DAVIS. Tab 49, on March 1, 1973, the President met three times with John Dean in the Oval Office—from 9:18 to 9:46 a.m., from 10:36 to 10:44 a.m., and from 1:06 to 1:14 p.m. The President decided that the White House would explain publicly that Dean sat in on FBI interviews because he was conducting an investigation for the President.

Mr. DOAR. Tab No. 49.1 is information that I think the committee would want to study. It is reproduced a number of times through the material for the reason that Mr. Jenner and I have followed the practice that where we give to the committee a document, we give the entire document.

This is a summary of the meetings and telephone conversations between the President and John Dean between January 1, 1972, and April 22, 1973. It is our best information that this was compiled from the President's daily diary, because Mr. Dean has testified on several occasions that he did not keep an accurate record of his telephone calls or meetings.

The committee will note that on page 1, during 1972, there were very few meetings between the President and John Dean. For example, John Dean, counsel for the President, did not meet with the President during January, February, or March 1972. In April, the President met with John Dean for 3 minutes when he signed his 1971 income tax returns.

In May, there were pictures outside in the rose garden.

There was no contact between the President and John Dean during June and July 1972.

On August 14, there were some personal legal documents signed and Mr. Dean was in the room, or present for about 21 minutes.

Then the committee remembers the September 15 meeting and the committee has heard a recorded conversation of the period 5:27 to 6 o'clock. We will be asking the committee to consider a subpoena to the President for the final 17 minutes of that conversation on September 15.

Mr. COHEN. Mr. Chairman, could I just inquire here whether Mr. Doar has clarified the question raised by Mr. Butler at the last meeting?

You indicate on the second page that the President talked with Mr. MacGregor. Yet the transcripts turned over by the White House say the conversation is by Mr. Mitchell and the reference is to Henry, as I recall.

Mr. DOAR. We have not been able to clarify that.

Then you will see that in October and November, there were very short meetings. There were no other contacts in December.

On January 21, the President and Mrs. Nixon attended a worship service. John Dean attended.

Then on February 27, the President met alone with John Dean, then on the 28th. And now the date that we are referring to in this particular statement of information is March 1.

If you run on, you will see that there were meetings on the 6th, 7th, 8th, 10th, 12th, and on the 14th there were three either meetings or phone calls, and the 15th.

Now, the meeting on the 13th is the meeting that you will listen to this morning.

Then a meeting on the 16th, 17th, 19th, 20th, and 21st. and the meeting both in the morning and the afternoon meeting you will listen to, and the 22d, there was another meeting. Then the President sent Mr. Dean up to Camp David on the 23d and then there was no contact between the President and Mr. Dean until the 15th of April.

There was a meeting on the 15th. That was the day the tape recording system ran out.

There were two meetings on the 16th and there was a call on the 17th and another call on the 22d.

Mr. HOGAN. Mr. Chairman, when you say there was no contact, Mr. Doar, do you mean there was no telephonic contact, no memorandum contact, or just which?

Mr. DOAR. From this information, no——

Mr. HOGAN. No contact whatsoever?

Mr. DOAR. No, I cannot represent that, because we do not know about memorandum contact.

Mr. HOGAN. But you do know about telephone?

Mr. DOAR. Well, the telephone calls are in here. This was referred to us by the President, referred to Mr. Jaworski. I presume it is off the President's daily diary. I presume it is an abstract off the diary. Because of the diaries we have, these times correspond.

Mr. LATTI. Mr. Doar, do you have the date that Mr. Dean became counsel to the President?

Mr. DOAR. I do not have that with me. I can get that for you, Mr. Latta. I believe that was late in 1971.

Mr. LATTI. Late in 1971?

Mr. DOAR. We think it might be.

The CHAIRMAN. Will you explain that, Mr. Doar?

Mr. DOAR. We will.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, could you tell me, of the conversations that took place between Mr. Dean and the President within the areas that were subject to being recorded, do we have all those conversations? Are some of them tapes that have been denied us, that are listed on this log? Part of the question involves why do we start with a conversation far down in the list when there seem to be other conversations that might be relevant? Is it because we do not have those?

Mr. DOAR. Well, when we made our request for the materials, we made the request based upon the best information we had with respect to the subjects which were discussed. So we did not request every conversation. It may be that after the committee hears the testimony and the materials that we have, there will be other conversations in this period that we think, we would recommend to the committee that we ask for. But we did not ask for them all.

Mr. WALDIE. Yes. Then may I just ask this final question?

Are there any that we do not have that we have sought and have been refused?

Mr. DOAR. Well, I was going to come to that a little later this morning. It does raise an important problem.

There is a matter about the 17th of March. I think that, I was going to explain when we get to it, Mr. Chairman—

The CHAIRMAN. I think it would be in order, Mr. Doar, knowing what that sequence is, that you explain that when you get to it. I think the members of the committee would have a better appreciation and understanding of what that all signifies if you do it in the manner in which you discussed it with me.

Mr. DOAR. All right.

Mr. HUNGATE. Mr. Chairman, I was going to suggest that as soon as we could, we move ahead.

The CHAIRMAN. I hope we can, because this tape is going to take an hour and some minutes to listen to.

Mr. DOAR. Mr. Jenner said I mentioned March 12 and I must have misread the number. I apologize for that. I meant March 13.

The next tab I want to call the committee's attention to because we will be referring to that. That is tab 49.2. This is an exhibit that was introduced before the Senate select committee and if you will look at IV of tab 49.2, which is the second page of the page before the memorandum, you will see that that is labeled as "Detailed notes of Fred Thompson, Minority Council, of a telephone conversation with J. Fred Buzhardt, Special Counsel to the President, re: Conversation between the President and Mr. Dean."

Mr. Thompson apparently called Mr. Buzhardt and said, I would like to have a record or summary of the discussion that took place between the President and Mr. Dean. Mr. Buzhardt called Mr. Thompson and gave him the information. Mr. Thompson took these notes, and then after he took them, he went over them and verified them with Mr. Buzhardt.

Mr. WIGGINS. Counsel, my tab does not include the notes of Mr. Thompson. Should it be in the book?

Mr. DOAR. They are on page 1796.

Mr. WIGGINS. That is a memorandum? That is not the Buzhardt memorandum?

Mr. DOAR. No, those are Mr. Thompson's notes of the telephone conversation. So those are Mr. Thompson's notes.

Is that clear, Congressman?

Mr. WIGGINS. It is now.

Mr. DANIELSON. Mr. Chairman, IV indicates page 1794. We have page 1796.

The CHAIRMAN. We have no 1794.

Mr. DOAR. 1794 was reproduced in an earlier book. It is the affidavit of Mr. Thompson explaining how this memorandum was secured. He explains the telephone conversation with Mr. Buzhardt.

Mr. DANIELSON. But 1796 is the substance?

Mr. DOAR. That is right. Tab No. 50.

Mr. DAVIS. Tab 50, on March 2, 1973, President Nixon explained at a press conference that John Dean had access to FBI interviews in July and August 1972 because he had conducted an investigation at the direction of the President. The President stated that Dean's investigation showed that no one on the White House staff at the time Dean conducted his investigation had knowledge of or was involved in the Watergate matter. The President promised to cooperate with the Senate select committee if it conducted its investigation in an even-handed way. The President stated that because of executive privilege, no President could ever agree to allow the counsel to the President to testify before a congressional committee. The President said that if the Congress requested information from a member of the White House staff, arrangements would be made to provide that information.

Mr. DOAR. Tab 51—Mr. Jenner.

Mr. JENNER. I would like to call the committee's attention to the second sentence—that is, "The President stated in the news conference report" that is under this tab, "that Mr. Dean's investigation showed that no one in the White House staff at the time Dean conducted his investigation had knowledge of or was involved in the Watergate matter." That is taken directly from testimony and—well, it is taken directly from the President's statement.

It is a little convoluted as to whether the President was emphasizing the period when Dean began his investigation, which was after the course of events, or whether he intended to relate back to an earlier period. But in order that we not interfere with the committee's judgment in interpreting the language, that is a virtual quote.

Mr. DOAR. Tab No. 51.

Mr. DAVIS. Tab 51, as Gray's confirmation hearings continued during the first week in March 1973, public reports circulated that John Dean would be called to testify. Dean has testified that on March 4 or 5, 1973, he reported to Ehrlichman that it would be difficult to win a court test of executive privilege involving Dean as counsel to the President because Dean had met with the President so infrequently.

Mr. JENNER. In that connection, as to whether there had been in-

frequent meetings, Mr. Doar and I wish to call your attention to the fact that Mr. Dean met with the President on February 27 and 28 and three times on March 1.

Mr. DOAR. Tab No. 52.

Mr. DAVIS. Tab. 52, on March 6, 1973, the President met with John Dean in the Oval Office between 11:49 a.m. and 12 Noon. According to information supplied to the Senate select committee by White House Special Counsel Buzhardt, the President decided that executive privilege guidelines would cover former as well as present White House personnel. Dean has testified that the President told him to report directly to the President and not to involve Haldeman and Ehrlichman with Watergate-related matters. On March 7, 1973, the President met with Dean in the Oval Office from 8:53 to 9:16 a.m. and, according to information supplied by Buzhardt, there was a discussion of executive privilege guidelines; Dean told the President that the White House was clear; and the President inquired as to how Gray was doing. Dean has testified that the President instructed him to telephone Attorney General Kleindienst to cut off Gray from turning over any further Watergate reports to the Senate Judiciary Committee, and Dean so instructed Kleindienst.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, you will notice in the third sentence, Dean has testified that the President told him to report directly to the President and not to involve Haldeman and Ehrlichman with Watergate-related matters. There had been a meeting between the President and Mr. Dean on February 27, so that you want to be sure that this sentence does not lead you to believe that this was the first time. There had been a previous meeting.

Mr. DOAR. Tab No. 53.

Ms. HOLTZMAN. Mr. Doar, did you request the tapes of these conversations?

Mr. DOAR. No, we have not requested for March 6 or 7.

Ms. HOLTZMAN. Are you going to recommend to the committee one way or another how we should deal with these conversations or make requests for them?

Mr. DOAR. Yes, we are going to recommend one way or the other with respect to this period.

Ms. HOLTZMAN. Thank you.

Mr. DOAR. No. 53.

Mr. DAVIS. Tab 53, on or about March 7, 1973, L. Patrick Gray and John Ehrlichman had a telephone conversation. Gray told Ehrlichman that he was being pushed awfully hard in certain areas and was not giving an inch, and that Ehrlichman knew those areas. Gray also told Ehrlichman to tell Dean to be very careful about what he said and to be absolutely certain that he knew in his own mind that he delivered everything he had to the FBI, and not to make any distinction between the recipients of the materials.

Mr. DOAR. This conversation and a subsequent conversation between Mr. Ehrlichman and Mr. Dean were recorded by Mr. Ehrlichman. The conversation between Mr. Gray and John Ehrlichman is recorded at 53.1, page 2950. If you see Mr. Gray's second answer there, which is a long answer, and go right to the middle of the page, on page 2950, you will see the paragraph which begins, "Another thing I want to talk

to you about," and this is a contemporaneously recorded conversation, in which he says:

You have got to telephone Wesley to stand awful tight in the saddle and be very careful about what he says and to be absolutely certain that he knows in his own mind that he delivered everything he had to the FBI and don't make any distinction between—but that he delivered everything he had to the FBI.

Now, Mr. Gray testifies and explains to the committee on 53.3 the fact that on the day before, he had had a conversation with Mr. Dean about this and Mr. Dean had told Mr. Petersen that he had given some of these politically sensitive, nonrelated Watergate matters to Mr. Gray and that Mr. Petersen apparently had mentioned it to Mr. Gray. Mr. Gray's explanation was that he was telling Mr. Ehrlichman to tell Mr. Dean that in light of the instructions he had received when he took the material, and because he had looked at the envelope and seen this cable about South Vietnam and had assumed that it was genuine—that is the cable involving the Diem administration overthrow—that he thought that it was important that there be no disclosure to the committee about the fact that he had received materials himself, personally, which were in Mr. Hunt's safe. He testified to the Senators that he was not prepared and was not and did not intend to tell an untruth about that, but that he would not volunteer that information if he was not questioned about it. Tab No. 54.

Mr. DAVIS. Tab 54, after the call from Gray, Ehrlichman called Dean. Ehrlichman told Dean that Gray wanted to be sure that Dean would stay very firm and steady on his story that Dean had delivered every document to the FBI and that Dean not start making nice distinctions between agents and directors. Ehrlichman also told Dean that he thought they ought to let Gray hang there and "twist slowly, slowly in the wind." Dean agreed and said, "I was in with the boss this morning and that is exactly where he was coming out."

Mr. DOAR. The reference to the nice distinction between agents and directors refers back to the meeting that Mr. Gray, Mr. Ehrlichman, and Mr. Dean had in Mr. Ehrlichman's office when Mr. Gray was handed those two packages of documents that had been removed from Mr. Hunt's safe and that we have already described to the committee.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. I wish that we would try to hurry this along, these questions, because otherwise, we are going to be running into the noon session and I would hope we would get through listening to that tape before any quorum calls.

Ms. HOLTZMAN. Does the committee have the actual tape of this conversation?

Mr. DOAR. No; we do not.

Ms. HOLTZMAN. Have you asked for it?

Mr. DOAR. The Senate select committee, when they requested it from Mr. Ehrlichman, was only given the transcript. We have not asked for the original tape.

Mr. OWENS. Is that true of all the Ehrlichman tape conversations?

Mr. DOAR. Yes.

Mr. OWENS. They have never been verified by any source?

Mr. DOAR. We have not verified any of those.

Mr. OWENS. Will we subpoena those tapes?

Mr. DOAR. Mr. Davis tells me that we do have some of those from the Special Prosecutor.

Mr. OWENS. It would seem worthwhile to at least verify the transcripts.

Mr. DOAR. All right. Tab No. 55.

Mr. DAVIS. Tab 55, on March 8, 1973, Dean met with the President in the Oval Office from 9:51 to 9:54 a.m. Dean has testified that the President asked if something had been done to stop Gray from turning over FBI materials to the Senate Judiciary Committee, and Dean replied that he had believed the matter had been taken care of by Attorney General Kleindienst.

On March 10, the President and Dean spoke by telephone from 9:20 to 9:44 a.m. Dean has testified that the President called to tell him that the executive privilege statement should be got out immediately, and that this should be done before Dean was called before the Senate Judiciary Committee in connection with the Gray hearings so that it would not appear that the statement on executive privilege was in response to the action by the Senate committee.

Mr. DOAR. The only matter that I want to call your attention to on tab 55 is that on page 1797 of 55.3, in the information that Mr. Buzhardt furnished to Mr. Thompson, there is a question mark there. We have not resolved why there was no information about that conversation. There is a possibility that the conversation was not recorded. Tab 56.

Mr. DAVIS. Tab 56, on March 12, 1973, the President issued a statement on executive privilege. The statement set forth in part:

A member or former member of the President's personal staff normally shall follow the well-established precedent and decline a request for a formal appearance before a committee of the Congress. At the same time, it will continue to be my policy to provide all necessary and relevant information through informal contacts between my present staff and committees of the Congress in ways which preserve intact the Constitutional separation of the Branches.

Mr. DOAR. Tab No. 57.

Mr. DAVIS. Tab 57, on March 13, 1973, the Senate Judiciary Committee voted in executive session to ask John Dean to testify in the Gray confirmation hearings concerning his contacts with the FBI during the investigation of the Watergate break-in.

Mr. DOAR. Tab No. 58.

Mr. DAVIS. Tab 58, on March 13, 1973, the President met with John Dean from 12:42 to 2 p.m. The following is an index to certain of the subjects discussed in the course of the March 13, 1973, meeting:

Advisability of public disclosure-----	16-19, 65-69
Possible public testimony of Sloan, Kalmbach, Stans, and Mitchell-----	46-49
The pre-June 1972 role of Gordon Strachan in Watergate and Strachan's statements to investigators-----	58-59
The pre-June role of Jeb Magruder in Watergate-----	59-60
John Mitchell, H. R. Haldeman, and Gordon Liddy's intelligence program at CRP-----	61-63

Mr. DOAR. Do you want us to distribute them?

The CHAIRMAN. Yes; if you will distribute the transcripts and they will be picked up accordingly after the tape has been heard.

Mr. WIGGINS. Mr. Doar, can you tell me the source of the tape?

Mr. DOAR. The source of the tape?

Mr. WIGGINS. Yes.

Mr. DOAR. I believe—this particular tape is a copy of the original that was in Judge Sirica's courtroom.

Mr. WIGGINS. It comes through the grand jury process rather than from the White House; is that a fact?

Mr. DOAR. No; this one came through arrangement subsequent to receipt by the grand jury of this particular recording. But we got this tape from three sources: We got it from the grand jury, we got it from the White House, and then we made a copy in Judge Sirica's chambers.

Mr. JENNER. Congressman Wiggins, you will recall that last week, I reported meetings with Judge Sirica at which Judge Sirica permitted us to make tapes from the originals in his custody.

Mr. WALDIE. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Mr. WALDIE. We have been asking if the transcripts have been compared to the White House transcript. Do we have that comparison made yet?

Mr. DOAR. We are working on one. It has not been reviewed yet, but we ought to have it for you by tomorrow.

Mr. WALDIE. On this transcript we have here?

Mr. DOAR. Yes.

The CHAIRMAN. All right. Will you please proceed?

[Whereupon a tape recording of the meeting of John Dean with the President on March 13, 1973, from 12:42 to 2 p.m. was heard.]

The CHAIRMAN. Would you collect these transcripts, please?

What do you have now, Mr. Doar? We could go on until a quorum call.

Mr. DOAR. All right. We could go on to——

The CHAIRMAN. We are in recess. We are recessed, so we can go on for a half-hour.

Mr. DOAR. Mr. Jenner wants to take a minute break.

The CHAIRMAN. Go ahead.

Mr. DOAR. Should I go on, Mr. Chairman?

The CHAIRMAN. Those were the warning bells.

Mr. DOAR. Should I go on?

The CHAIRMAN. Yes.

Mr. DOAR. Paragraph 59.

Mr. DAVIS. Tab 59, on March 14, 1973, Dean wrote to Senator James O. Eastland, chairman of the Senate Judiciary Committee, and citing the doctrine of executive privilege, formally refused to testify in the Senate confirmation hearings on the nomination of Gray to be Director of the FBI. On the same day, the President met with Dean and White House Special Counsel Richard Moore, in his Executive Office Building office from 9:43 to 10:50 a.m., and from 12:47 to 1:30 p.m. They discussed a press conference scheduled for the next day, and making Dean a test case in the courts on executive privilege.

Mr. DOAR. Tab 60.

Mr. DAVIS. Tab 60, on March 15, 1973, the President held a press conference. He stated he would adhere to his decision not to allow Dean to testify before the Congress, even if it meant defeat of Gray's nomination as Director of the FBI, because there was a "double privilege, the lawyer-client relationship, as well as the Presidential privilege." He also stated that he would not be willing to have Dean sit

down informally and let Senators question him, but Dean would provide all pertinent information.

Mr. DOAR. Tab 61.

Mr. DAVIS. Tab 61, on or about March 16, 1973, E. Howard Hunt met with Paul O'Brien, an attorney for CRP. Hunt informed O'Brien that commitments had not been met, that he had done "seamy things" for the White House, and that unless he received \$130,000 he might review his options. On March 16, 1973, Hunt also met with Colson's lawyer, David Shapiro. According to Colson, Hunt requested of Shapiro that Colson act as Hunt's liaison with the White House, but was told that that was impossible.

Mr. DOAR. Members of the committee, these next paragraphs contain a great deal of grand jury testimony between March 16 and March 22. The first testimony is at 61.1 which is the testimony of Paul O'Brien. Mr. O'Brien met with Mr. Hunt on the 16th of March.

At page 27 of his grand jury testimony he relates that he received a call from Mr. Bittman, who was Mr. Hunt's attorney, indicating that his client was extremely upset, and that he had received word that he was going to be sentenced on the 23d and that he was attempting to put his affairs in order and take care of such matters as regarding his children and some commitments, and that it was imperative that Mr. O'Brien come to his office and discuss the matter with Mr. Hunt.

He then relates how he went over to Mr. Bittman's office and he went there alone, he met at the office alone with Mr. Hunt. Mr. Bittman said to him, "I am busy on the phone, go talk to him. He's going to tell you the same thing I told you."

Then he relates how he went down to a small conference room in Mr. Bittman's office and had the following conversation with Mr. Hunt.

Question. Now, what did Mr. Hunt tell you?

Answer. Mr. Hunt went over essentially the same ground, that his commitments hadn't been met, that he was going to be sentenced. He seemed particularly disturbed and agitated.

And Mr. O'Brien said:

I told him that I didn't have anything to do with his commitments, that I was sorry, but I didn't think that I could help him.

He said:

He had no intention of letting me out on that basis. He went on and stated that he had \$60,000 in legal fees outstanding and he made a demand for \$130,000. It is my recollection that it was \$60,000 and \$70,000 total. During the course of the conversation he indicated that he had done—the word he used was "seamy" things—for the White House. He instructed me to pass this information on to Mr. Dean and he indicated that these things didn't happen—if these things didn't happen, he would have to review his options.

In addition, during the course of the conversation I indicated to him again, as I said, that I was powerless in this situation, and I thought he had best contact his friend, Mr. Colson, or someone else who could assist him.

And the question was:

What was his reaction to that?

Answer. There was some indication that he had been in contact with Mr. Colson and he really didn't give a damn about my suggestion. He was just telling me what to do at that stage.

Question. Was there any other inference in his statement that he would have to review his options made in conjunction with his statement about having done seamy things, which led you other than to the conclusion that he was threatening to publicly make some sort of statement unless his demands were met?

O'Brien answered:

I've got to be frank and tell you at the time the peripheral aspects of his conversations, such as the seamy things and review his option, didn't hit me with that particular impact. I had never had anyone make a personal demand on me for over \$100,000. I mean, it wasn't just that somebody approached me for a dime for a cup of coffee. Frankly, it sort of sent me right up the wall. I just wanted out of there.

Question. Did Mr. Hunt indicate that you ought to convey this message to Mr. Dean?

Answer. He did.

Question. After you left the office, what did you do?

Answer. I stopped back past Mr. Bittman's office and I reiterated the essence of the conversation.

Well, Mr. Bittman indicated "that Mr. Hunt was extremely agitated and upset, and he was going to do this. That was about it. I then departed."

Tab 61.2 is the testimony of Howard Hunt on July 17, 1973. And he is asked about this same conversation. He confirms that the conversation took place in the office of Hogan and Hartson, in Mr. Bittman's office, and only two of them were present. And he was asked:

During this conversation did you state in essence to Mr. O'Brien, first, you apologized for putting him in the middle, and then explained that you only have a certain number of days in which to get your affairs in order and then, commitments had been made but had not been kept? Did you say those words in substance?

Answer. In substance, yes, sir.

Question. In substance to Mr. O'Brien?

Answer. Yes, Sir.

Question. And did you say you'd done a number of seamy things for the White House?

Answer. I may very well have, yes, Sir.

Question. Well, to the best of your recollection, did you?

Answer. Yes, Sir. In the context that I wanted him and his principals—to remind him and his principals that Watergate was not the only activity that I had engaged in for them.

Question. And you used the word to describe the nature of those activities such as seamy?

Answer. Yes, Sir.

Question. And you told him to deliver that message, that you had done a number of seamy things for the White House, and that if something didn't happen—referring to your commitment, the commitments—you would have reviewed the alternatives? Did you make statements in substance to that effect to Mr. O'Brien?

Mr. Hunt answered:

Can we break that down into two parts, Sir? Would you go into the first half of that I would like to respond directly to that in one context.

Question. Well, why don't you just go ahead and tell us how you put it, tell us the conversation that you had with Mr. O'Brien in the middle of March 1972.

Answer. I did not tell Mr. O'Brien to give any messages. That is one part I want to answer specifically.

Question. Well, did you think Mr. O'Brien—why were you telling him this then?

Answer. Because I knew that he was a middle man of sorts.

Question. You knew he would deliver messages, didn't you?

Answer. Pardon me?

Question. You knew he would deliver the message?

Answer. I didn't know that he would deliver the message, no, sir.

Question. Were you saying this just to talk with Mr. O'Brien?

Answer. I was hoping eventually it would reach some ears.

Question. OK. So what you are saying is that you didn't say in so many words, I want you to deliver a message?

Answer. Precisely. He deprecated his role to me very much. He said he only saw people occasionally : that he was just a middle man ; he had no influence ; he was glad to meet with me on that basis, so long as I understood this sort of thing. Then there was the discussion about—I just want the truth from you.

Answer. Yes, sir.

Question. I don't want to put words in your mouth.

Answer. And I don't want Mr. O'Brien to put words into my mouth.

Question. And I don't want Mr. O'Brien to put words in your mouth. Now, would you prefer to go through what you told Mr. O'Brien in the middle of March?

Answer. To the best of my recollection, yes, sir. I had asked specifically for the meeting with Mr. O'Brien because I was within a few days of sentencing. I was in a very depressed physical, and certainly, mental condition. My wife had been killed. I was coming up for sentencing very shortly. My financial position was extremely uncertain. I had no idea what kind of sentence Judge Sirica might mete out.

Question. Now, what I am interested in is what you said to Mr. O'Brien. I do understand that position.

Mr. Hunt answered : I covered all of these matters with him.

Question. Then what I read to you, the substance of that conversation, with the exception in that you didn't say, "I want you to deliver a message"—

Answer. So far, yes, sir.

Question. Now with the words seamy things for the White House, did you mention any name there?

Answer. I never knew who he was dealing with.

Question. No. In respect to the seamy things, did you mention any name?

Answer. I may have said Dean. I may have concluded that he was dealing with John Dean.

Question. You did do seamy things for Dean?

Answer. No, sir.

Question. All right. Did you mention anyone's name for whom you had done these seamy things in the White House?

Mr. Hunt answers :

I read press accounts that I said Ehrlichman. I did not say Ehrlichman.

Question. Forget the press accounts. What do you recollect?

Answer. I have no recollection I put a name on it. I said, "I have done a number of seamy things for the White House." The context being that they should take these into consideration as added reason for their obligations to me to help me out of my present plight, which had frightened me to death.

Question. You have no present recollection of having mentioned Mr. Ehrlichman's name in the course of that?

Answer. No, sir. I do not.

And then they go on to more questions about testifying :

Not to press reports but to your recollection.

And down at the bottom of the page :

Question. Did Mr. O'Brien respond to you about why you didn't contact some of your friends rather than going through him?

Answer. He was rather specific about it.

Question. What did he say?

Answer. He said again—he was a man of little or no influence, he was a message carrier. He said "Chuck Colson is your friend. Why don't you write him a memorandum?"

Question. What did you say with respect to that? You'd already had one conversation with Mr. Colson. You told him about the "ready". What did you say? What did you say in response to that?

Answer. I believe—first of all, I believed Mr. O'Brien was a man who was involved with Mr. Mitchell.

Question. Now, what did you say to him?

Answer. Sir, against that background—

Question. Yes.

Answer. I believed Mr. O'Brien to be a Mitchell man rather than a Colson man. I felt that what he wanted was something on the record that could involve Mr. Colson. And so, I don't believe I gave him a direct response.

To the best of my recollection I gave him something that I could—I said "on the other hand, Chuck hasn't been involved so far. I don't see any reason to involve him now."

Question. All right, did this conversation with Mr. O'Brien occur about the middle of March, about a week prior to your scheduled sentencing?

Answer. Approximately, yes, sir.

Question. And you said that your commitment had not been met, and you mentioned that you'd done a number of seamy things for the White House, and if the commitments weren't met you might have to review the alternatives?

Answer. I would put it in a different way, sir, to the best of my recollection. But I said that the commitments had not been kept and accordingly if I were suddenly to become a very poor man that I would no longer have options available to me which were currently available.

Question. And did you mention seamy things that you had done for the White House?

Answer. I had done that previously.

Question. But in the same conversation?

Answer. Yes. I had done seamy things for the White House, yes period.

Question. And that if the commitments weren't met and had you become a more poor man you might have to review the alternatives?

Answer. And see what other steps could be taken on my behalf.

Question. Now, a few days thereafter you received a package, didn't you?

Answer. Yes.

Question. How much was in that package?

Answer. \$75,000.

Question. Was that the last package that you've received to date?

Answer. Yes, sir. At that time in the conversation with Mr. O'Brien I told him specifically what my legal fees had amounted to.

Question. You said, as a matter of fact, you counted up to about \$70,000 living expenses and \$60,000 legal fees?

Answer. Whatever it was.

Question. Does that sound about right?

Answer. I would guess 50 or 60.

Question. And a few days after this conversation you received a package of cash amounting to \$75,000?

Answer. Yes, sir.

Then Mr. Hunt was questioned again on January 29, 1974, and the same conversation was gone over a number of times. And on the bottom of page 64 Mr. Hunt was asked what he meant by saying:

"I will have to review my alternatives if I don't get that money" and that can't mean anything except that you are going to reveal that, unless they meet your demand for money?

Mr. Hunt said:

Well, it's a matter of speaking, too. I review my alternatives. I review my options. What were my options. They were very damned slim.

Mr. Ben-Veniste said:

That's precisely the point, is it not, Mr. Hunt? Your option was either to continue to keep quiet or to talk. And what you are saying is that wasn't it in the event they weren't prepared to meet your demands, you'd had enough and you were about ready to talk?

Answer. I knew all along I was going to have to talk, and, in fact, I began to talk within a few days thereafter. Everyone knew that.

Question. That's not the point, Mr. Hunt. That's not the question. If everybody knew that, what was the point mentioning that? Then you have no option. That's totally inconsistent with the concept of option, if you were to suggest now that you had no option.

Answer. Well, that's a great White House phrase—options this, options that—it's a parlance I picked up. I was being as vague—

Question. It meant, did it not, that you were going to see whether or not you were going to talk. Does it have any other interpretation than that?

Answer. I don't know how it was interpreted.

Question. Well, does it have any other interpretation?

Answer. Well, the interpretation I placed on it was that I had been involved in "seamy things" for the White House of which Mr. O'Brien might not be aware, and my implication was that I, having done this kind of work for them before, felt that they had, in effect, a double obligation to me.

Question. But the second half of it is you will review your options if your demands are not met. And what does that mean?

Answer. Well, it sort of means, what a parent says to a child. "If you don't bring the car home at 11 o'clock tonight, I will have to give further consideration to our relationship." I mean, in other words, what does that mean really? It's just a form of speech I think.

Question. You were speaking to Mr. Shapiro as a parent does a child?

Answer. I would like to have. I didn't though.

Question. And, indeed, you were speaking to Mr. Shapiro in a manner that gravely indicates concern. You were in dead earnest?

Answer. Are we talking of Mr. O'Brien or Mr. Shapiro now?

Question. I am sorry. Mr. O'Brien, yes, and you are saying that you would have to review your options. You were saying, as a father might say to a child "You can't have the car anymore. I am going to do what you don't like me to do. I am going to punish you." Isn't that so?

Answer. It's very hard for me to reconstruct my frame of mind then.

Mr. DOAR. Then the question was:

In fact, the only thing you could punish them with was to tell the story—to tell about the seamy things.

Answer. Well, these people were well on top of the case, then. They knew it was just a matter of ten days or two weeks before this was going to come before the grand jury.

Question. The point is, Mr. Hunt, we are dealing with a conversation, at this time, and we are asking you, under oath before this grand jury, if you can provide any other explanation other than what the plain words mean that you would review your options.

Answer. Well, I know that at one point I was contemplating suicide.

Question. Mr. Hunt, that was not in your mind at the time. You were not threatening or stating to Mr. O'Brien, at this time, were you, that if these monies were not paid that you would commit suicide?

Answer. No.

Question. You don't mean to seriously suggest that?

Answer. No, I don't. But you're asking me now to project for you what was in my mind. This is one of those things that was in my mind.

Question. That had been in your mind earlier but, at this time, you were saying to Mr. O'Brien, "Look, in addition to what I know about Watergate and the chain of command, I have done a lot of things for Mr. Ehrlichman."

To this extent, this is new information that you are conveying to Mr. O'Brien that, to your knowledge, he didn't know about before, and you were saying this in the context of making demands for an extraordinary amount of money, but, in the face of your going away to jail and losing whatever bargaining position you had at that time, you clearly understood that that was the situation. That unless you got these commitments acted on, at that time, that your chances were substantially diminishing in being able to argue with your own case from jail later on. Isn't that right?

Answer. What do you mean? Arguing my case in jail?

Question. In respect to getting your commitments. In respect to getting your money.

Answer. Oh.

Yes. That was clearly foremost in your mind?

Answer. Right.

Question. And in the same connection, you are telling him, now, that you will review your options in the event that he is not responsive to your immediate demands.

Answer. He told me that he was impotent; that he was becoming very ineffective; that he was really not the one that I should be talking to, and so forth.

Question. Well, of course, you told him to pass on this demand to Mr. Dean and tell Mr. Dean what it was.

Answer. I don't know that I knew Mr. Dean was his principal, at that time. I said "To whomever." I don't believe Mr. O'Brien identified Mr. Dean. I could be wrong about that.

Question. So it is quite possible that if Mr. O'Brien recollects that you said "Pass it on to Mr. Dean," that Mr. O'Brien could be accurate in his recollection?

Answer. I beg your pardon, sir?

Question. That if Mr. O'Brien recollects you said, "Pass it on to Dean," that you would not quarrel with that particularly?

Answer. I would not quarrel particularly with it. I would say that, at that juncture, I had no knowledge that John Dean was active in this thing, as he turned out to be.

I presumed, all along, that O'Brien's principal was John Mitchell.

Question. And you were expecting it to be passed on to John Mitchell rather than to Mr. Dean?

Answer. To the best of my current recollection, yes.

Question. But Mr. Ehrlichman was at the White House, where Mr. Dean was, and Mr. Mitchell was up in New York on Wall Street, at the time.

Answer. I didn't know where Mr. Mitchell was.

Well, you knew where he was not.

Answer. Did I?

Question. Didn't you know he was no longer Attorney General?

Answer. I didn't know that he was not living down at the Watergate.

Question. Well, you knew he was not in the White House?

Answer. That is correct.

Question. Now, going back to the initial question, Mr. Hunt, is there any other interpretation one could place other than the plain meaning when you said you would review your options other than the fact that unless they met your demands you would tell about the seamy things?

Answer. I would like to consult with counsel on that point.

The record shows that Mr. Hunt left the room, and when he returned, Mrs. Volner asked if he had had time to talk to his attorney, he said he had, and she asked was he prepared to answer the question?

He asked to have the question restated. Mr. Ben-Veniste restated the question.

The question was one which has been restated several times, but, again, is there any other interpretation other than the clear meaning of the words that you would review your options for alternatives other than that you would tell about these so-called seamy things unless they met with your demands?

Answer. No.

Mr. BEN-VENISTE. "Thank you."

Then Mrs. Volner asked:

And what seamy things did you have in mind at the time, Mr. Hunt?

Answer. I was thinking about the Fielding episode—things like that—that were not integral with the Watergate itself.

Question. And what other things besides the Fielding break?

Answer. Oh, I think most of the items that have come out subsequently.

Question. Can you tell the grand jury, please?

Answer. Well, we are casting back, now, to just about a year ago. At that time, the Ellsberg thing was uppermost in my mind and I think, if I had actually gone ahead and done anything, I would have made a list of those dirty tricks and things as these things have come up.

Question. There were numerous items that would have been on your list?

Answer. That is correct, yes.

Question. And I am asking you what those things were.

Answer. Oh, my. The Segretti involvement, I suppose. The Vietnam cables. Principally, the whole Fielding-Ellsberg thing.

Then there is a short statement, page 61.4, where Mr. Colson relates how Mr. Shapiro met with Mr. Hunt on March 16 and reported to Mr. Colson on March 19. He says that—

While Hunt had confirmed that I had no knowledge or involvement in Watergate, Hunt wanted me to act as liaison between himself and the White House. Mr. Shapiro said he told Mr. Hunt that that was impossible, that Mr. Hunt would have to find some other way of making his position known at the White House and that I would be instructed to have no contact either with Mr. Hunt or with the White House concerning Hunt. Following his report, Mr. Shapiro told me in the strongest possible language to have no further discussions with anyone in the White House regarding Howard Hunt.

The CHAIRMAN. I think, Mr. Doar, we will recess now until 2 o'clock.

Mr. JENNER. Mr. Chairman, could I call the committee's attention to one thing? That is tab 61.1, page 30 of the grand jury transcript.

You will notice Mr. O'Brien's testimony commencing on line 17.

Did you then repeat what Mr. Hunt had told you to Mr. Dean?

Answer. I did.

Question. When was that?

Answer. As far as I recall, immediately following the meeting.

The CHAIRMAN. We will recess until 2 o'clock.

[Whereupon at 12:26 p.m., the committee recessed to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. Mr. Doar.

I would like to announce to the committee that Mr. St. Clair has advised us that some time this afternoon, should we not conclude before 4:30 or so, and I do not know that we will by that time, but Mr. St. Clair may have another pressing matter before the Senate Judiciary Committee and he advised us that Mr. McCahill will be left behind to continue. And he merely wanted to give us formal notice of that. And I assured Mr. St. Clair that it was perfectly okay.

So at any time, Mr. St. Clair. Mr. Doar.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, Mr. Latta asked me when Mr. Dean became counsel to the President, and that was in July 1970.

And Congressman Cohen and Congressman Butler had asked as to the name in the tape interruption on September 15 and the name is MacGregor, and the White House transcript was in error.

The CHAIRMAN. Thank you.

Mr. DOAR. Paragraph 62.

Mr. DAVIS. Tab 62, on March 17, 1973, the President met with John Dean in the Oval Office from 1:25 to 2:10 p.m. On April 11, 1974, the Committee on the Judiciary subpoenaed the President to produce the tape recording of the March 17 meeting. The President has refused to produce that tape but has furnished an edited partial transcript of the meeting. After having listened to the tape recording of the March 17, 1973, meeting, the President on June 4, 1973, discussed with Press Secretary Ron Ziegler his recollections of that March 17 meeting. A tape recording of the June 4 discussion has been furnished to the committee. The evidence regarding the content of the March 17 meeting presently possessed by the committee also includes a sum-

mary of the March 17 meeting furnished in June 1973 to SSC Minority Counsel Fred Thompson by White House Special Counsel Buzhardt and the SSC testimony of John Dean.

In this discussion with Ziegler on June 4, 1973, the President told Ziegler the following regarding the March 17 meeting: Up to March 17, 1973, the President had no discussion with Dean on the basic conception of Watergate, but on the 17th there began a discussion of the substance of Watergate. Dean told the President that Dean had been over this like a blanket. Dean said that Magruder was good, but that if he sees himself sinking he'll drag everything with him. He said no one in the White House had prior knowledge of Watergate except possibly Strachan. There was a discussion of whether Haldeman or Strachan had pushed on Watergate and whether anyone in the White House was involved. The President said, in effect, that Magruder had put the heat on and Sloan had started blaming Haldeman. The President said that "we've got to cut that off. We can't have that go to Haldeman." The President said that looking into the future there were problems in that Magruder could bring it right to Haldeman and that could bring it to the White House, to the President.

The President said that "we've got to cut that back. That ought to be cut out." There was also a discussion of the Ellsberg break-in.

The edited partial transcript of the March 17 meeting supplied by the White House contains only a passage of conversation relating to Segretti and a portion of the conversation relating to the Ellsberg break-in. It contains no discussion of matters relating to Watergate.

Mr. DOAR. I would like to explain this paragraph in some detail, members of the committee. On June 4, 1973, President Nixon listened to earlier conversations in the Executive Office Building. He listened to a number of conversations that he had had with John Dean in the month of March. The recording system was operating that day and a recording was made, a 6-hour recording. Mr. Jaworski asked the White House if he could have a copy of that recorded conversation, and it was delivered to Mr. Jaworski voluntarily.

When we asked the White House, Mr. St. Clair on the 25th of February for certain materials, including all of the materials which had been given to Mr. Jaworski he agreed to give us the materials which he had given to Mr. Jaworski, and subsequently we received a copy of the June 4 tape recording.

The June 4 tape recording which we received was totally inaudible in the sense that you couldn't make hardly any words out of it, the one we received from the White House. Much of the tape recording is a recording of a tape recording because the President was in his office listening to tapes, and so that it is not surprising that a great part of that was not or you could not pick that up.

When we received the material from the grand jury, the recording of the June 4 conversation, that we got from the grand jury, it had some audible portions of that tape and we then made another copy of that June 4 recording at the White House. And our second recording, the one we made ourselves, produced more audible portions of that tape.

We have about 110 pages of audible conversation on a 6-hour tape. And part of that conversation is a clear reference, a discussion to the

fact that the President had just finished listening to the March 17 recorded conversation with John Dean, and on that recording the President states his recollection of what was on that March 17 recording.

And we have set forth very briefly the substance of the President's recollection on June 4.

Now, when Mr. Buzhardt furnished his information to the Senate select committee he indicated, and you will see this at 62.2, at page 1792, and you will see that Mr. Buzhardt summarizes the March 17 conversation, and he indicates in the middle of it that the President asked Dean point blank if he knew about the planned break-in in advance. Dean said no. There was no actual White House involvement regardless of appearances except possibly Strachan. Dean told the President, Magruder pushed Liddy hard, but that Haldeman was not involved.

Now, when the President responded to your subpoena on April 30, 1974, as is set forth at transcript 62.4, his official response to that meeting was that all that was included was material relating to a break-in at Dr. Fielding's office in California. Tab 62.4 sets that forth. And there is no recorded conversation about Watergate or the investigation of Watergate or the involvement of Strachan, Magruder, Sloan, and Haldeman. And yet, as I say, the President on June 4 tells Mr. Ziegler that he's been listening to these tapes and on the 17th that there began to be a discussion between he and Mr. Dean on the substance of Watergate.

Now, it would be my suggestion, Mr. Chairman, that Mr. Jenner and I inquire of Mr. St. Clair after this meeting if he will check to see whether or not that conversation was edited incorrectly, or if there is not, relevant additional material on the March 17 conversation. There is, of course, the possibility that there was a mistake, the President was mistaken when he referred to the 17th.

But, both Mr. Jenner and I have listened to that conversation and on its face, it appears that the President was speaking specifically about March 17.

The CHAIRMAN. Mr. Jenner?

Mr. JENNER. I have nothing to add to it.

The CHAIRMAN. I think, and I am sure that the committee has no objection to your speaking with Mr. St. Clair regarding that matter which I think was also in the overall request that we need. But, nonetheless, as you say, it is entirely possible that there might have been a mistake when that portion was not turned over or that it did not exist. But, nonetheless, I think that that is an appropriate item to discuss with Mr. St. Clair since it would shed light on that question.

Mr. DOAR. We are prepared at a later date to play the June 4 conversation for the committee, in any event.

The CHAIRMAN. That would be helpful at that time for the committee then to make a decision as well.

Mr. DOAR. Tab 63.

Mr. DAVIS. Tab 63.

Mr. WALDIE. May I interrupt? I am sorry, I did not get the exchange that occurred when our counsel, Mr. Doar, said that he was asking permission to discuss with Mr. St. Clair whether there was

an explanation of the discrepancy and then the Chair asked Mr. St. Clair and Mr. St. Clair's response was he has nothing to say?

The CHAIRMAN. No. No. There was no question put to Mr. St. Clair at all.

Mr. WALDIE. Oh, I am sorry.

The CHAIRMAN. I merely suggested that Mr. Doar inquire of Mr. St. Clair regarding this matter that might be just an oversight or a mistake.

Mr. WALDIE. All right. OK. I am sorry. I misunderstood.

The CHAIRMAN. And we will be listening to that tape of June 4 which sheds light on that question, because there is there conversation by the President with Mr. Ziegler which points to some suggestion that there was a discussion of Watergate on or about March 17.

Mr. WALDIE. Yes. I am sorry. I misunderstood that conversation.

Mr. JENNER. Mr. Chairman, in this connection I do wish to add that Mr. Doar and I were concerned about this and we listened to the June 4 tape this morning in the preparation for this meeting.

The CHAIRMAN. You may proceed, Mr. Doar.

Mr. DOAR. Tab No. 63.

Mr. DAVIS. Tab 63; on March 19, 1973, Paul O'Brien met with John Dean in the EOB and conferred a message from E. Howard Hunt that if money for living and for attorney's fees were not forthcoming, Hunt might have to reconsider his options and might have some very seamy things to say about Ehrlichman.

Mr. DOAR. Tab 63.1—

Mr. JENNER. Excuse me, John. That word "seamy" might well be quoted. It is not our word. It is the word that appears in the testimony.

Mr. DOAR. Tab 63.1 is Mr. O'Brien's testimony to the effect that he reported what Mr. Hunt had told him immediately following the meeting to Mr. Dean.

Tab 63.2 is John Dean's grand jury testimony in February of this year to the effect that he had learned that Howard Hunt was threatening to reveal certain matters if his demands of payments of substantial amounts of money were not met, that he had learned this from Mr. Paul O'Brien who told him that he had met with Mr. Hunt and had told him a number of things. And O'Brien had told him to take this to Dean.

The essence of the message was that if this money did not come he would have to reconsider his options and might have some very "seamy" things to say about Mr. Ehrlichman.

Tab 63.3 is the Secret Service appointment record that shows that Mr. O'Brien entered the White House or the Executive Office Building at 1720, that is 5:20 in the afternoon on March 19 for an appointment with John Dean. Paragraph 64.

Mr. DAVIS. Tab 64; on March 20, 1973, John Ehrlichman met with John Dean at the White House. They discussed Howard Hunt's request for money, the possibility that Hunt would reveal activities of the Plumbers' operation if the money were not forthcoming, and plans for Dean to discuss the matter with John Mitchell. According to Dean, Dean discussed the matter with Mitchell by telephone later that evening, but Mitchell did not indicate whether Hunt would be paid.

On the afternoon of March 20, 1973, Ehrlichman had a telephone

conversation with Egil Krogh and told him Hunt was asking for a large amount of money.

They discussed the possibility that Hunt might publicly reveal the Plumbers' operations. Krogh has testified that Ehrlichman stated that Hunt might blow the lid off and that Mitchell was responsible for the care and feeding of Howard Hunt.

Mr. DOAR. Tab 64.1 is John Ehrlichman's testimony before the grand jury, in September 1973 and he was asked if he had this conversation on March 20 with John Dean in which Dean told him of that conversation or message he had gotten from Mr. Hunt. And he recalled that Dean told him that he either had a call or conversation with an attorney on behalf of Hunt and that unless Hunt was paid a substantial amount of money he would disclose activities in which he had been engaged in during the time that he was at the White House.

And he said that "those activities related to Mr. Krogh," and Dean related them as "affecting me." And said that Dean related that Hunt had said that he would have a lot of things to say about "seamy things" that he had done while he was at the White House.

Mr. Ehrlichman said that his response was that he said that "it looked to me like blackmail. I said also it looked to me like he was talking about the Plumbers' operation and I inquired whether this fellow had indicated that this was to be a particular event that he was threatening about or if this was the whole special unit operation, and Dean said that he didn't know."

And then he verifies that Dean told them about the money totaling over \$100,000 and two sums were mentioned. He said he didn't recall what the money was to be used for. Then he said he asked Dean for his estimate and the reality of this, whether it was a real problem for them or not, because he was thinking in terms of Hunt making a disclosure to the prosecutors of the special unit operations. And Dean told him he thought it was not a threat to go to the press or to the public as much as it was to go to the prosecutors. He said, after that was over, he said "I told Dean that I think you ought to talk to Colson and see if he can give you any feel or estimate of whether this was the case or not. And at the same time discuss the possibility of problems in the exposure of the special unit operations."

And he didn't think that posed any problem because Petersen already had information about the special unit for a long time. And he said he was shaken by this because Dean put it in terms that this threat was a threat "aimed at me on a personal basis."

He was asked if he gave Dean any instructions and he said "I couldn't recall any" but he said he "thinks that Dean said he was going to discuss it with Mitchell, that I didn't ask him to discuss it with Mitchell."

Tab 64.2 is John Dean's testimony before the grand jury.

The CHAIRMAN. Mr. DOAR, I think we will have to recess for 15 minutes. We have got another record vote.

[Short recess.]

The CHAIRMAN. The committee will proceed.

Mr. DOAR. Members of the committee, I was talking about 64.2; which is John Dean's grand jury testimony. He testifies that he told Mr. Ehrlichman about this conversation and that Mr. Ehrlichman—this is at the bottom of page 14 at 64.2. He said, "He asked me if

I talked with John Mitchell about it." I said, "No, I had not." He said, "Well, I think you had better talk to Mr. Mitchell about this." and that was the conversation.

He was asked if he had a conversation later with Mr. Mitchell. He said, "I did * * * I had to call him in New York." It was late in the evening and he had left the office he said that he had had a guarded conversation with him, but the substance of the conversation was that he had related to Mr. Mitchell "what Mr. Ehrlichman had asked me to relate to him."

He was asked what was Mr. Mitchell's response, if any?

He said he did not recall, but he said—he referred to a Mr. Pappas "as a Greek bearing gifts" and that most of the conversation was in a guarded manner like this.

He said, "And Mr. Mitchell indicated to me he believed Mr. Pappas was going to be in town shortly"—something to that effect.

Then he was asked specifically if Mr. Mitchell had indicated to him one way or another whether Mr. Hunt would be paid. He said, "No, he did not."

Then we have Mr. Krogh's testimony before the grand jury. This is 64.3. He relates that he had a conversation with Mr. Ehrlichman after Ehrlichman had a meeting with Mr. Dean and he said it was about 4:30 or 5 o'clock in the afternoon. And he said, "Mr. Ehrlichman told me * * * that Mr. Hunt had been asking for a great deal of money."

Then he was asked, "What else did Mr. Ehrlichman say?"

He said, "I asked him what condition Mr. Hunt was in, and he"—Mr. Ehrlichman—"said he did not know; that John Mitchell was responsible for the care and feeding of Howard Hunt."

Then on the next page, page 7, he was asked:

* * * did you say that if the money was not paid, according to Mr. Ehrlichman, that Mr. Hunt would, in essence, tell all he knew?

Mr. Krogh said, "In essence, that is correct."

Tab 64.4 shows that on March 20 at 3:30, Mr. Ehrlichman and Mr. Dean had a meeting.

We turn to volume 5, members of the committee, and to paragraph 65.

Mr. DAVIS. Volume 5, tab 65, on March 20, 1973, Dean had a conversation with Richard Moore, special counsel to the President. Dean told Moore that Hunt was demanding a large sum of money before his sentencing on March 23, and that if this payment were not made, Hunt was threatening to say things that would be very serious for the White House. After this conversation, Dean and Moore met with the President from 1:42 to 2:31 p.m. According to information furnished to the Senate select committee by Special Counsel Buzhardt, the President and Moore agreed that a statement should be released immediately after the sentencing of the defendants. According to Moore, following this meeting, he told Dean that Dean should tell the President what he knew.

According to Dean, Dean told Moore that Dean did not want the President understood all of the facts involved in this case, particularly the implication of those facts and that he wanted to lay those facts and implications out for the President.

Mr. DOAR. Moore's testimony at 65.1 is that when Dean related this conversation with Hunt to him, he told him that it was pure blackmail and he said he should have nothing to do with it. He said "I could not imagine that anything that Mr. Hunt could say would be as bad as entering into a blackmail arrangement. I don't recall Mr. Dean's exact words, but he expressed agreement." Then he related a March 20 meeting with the President and Mr. Dean in the Oval Office. Then he said that as he went out of the office with Mr. Dean, he said to Dean that he had the feeling the President had no knowledge of the things that were worrying Dean. He said he asked Dean if he had ever told the President about them. Dean said he had not, and Mr. Moore testified he said, "The President isn't being served, he is reaching a point where he is going to have to make critical decisions and he simply has to know all the facts."

Then he said he had got a call later that night from Dean, who said the President had just phoned him and he said he decided that this was the moment to speak up and he told the President that things had been going on that the President should know about and it was important that Dean see him alone and tell him.

Mr. Moore said he said to Dean earlier: "I think you should go in and tell him what you know"—this is at the end of the first full paragraph—"You will feel better. It will be right for him and be good for the country." That is page 1945 at 65.1.

Mr. JENNER. Ladies and gentlemen, back on tab 65.1, the first full paragraph, the witness says "This revelation" to Mr. Moore "was the culmination of several other guarded comments Mr. Dean had made to me in the immediately preceding days."

You will recall that Mr. Doar and I have called your attention to the fact that O'Brien said that following his meeting with Hunt, he had immediately reported to Dean.

Mr. DOAR. Tab 65.2 is Dean's recollection of that meeting with the President, that afternoon.

Tab 65.3 is the log which shows the meeting. Tab 65.4 is Mr. Buzhardt's statement as to what took place in the meeting that afternoon with the President. Now, tab 66.

Mr. DAVIS. Tab 66, on March 20, 1973, John Dean had an evening telephone conversation with the President during which he arranged a meeting with the President for the next morning. According to the transcript of this conversation made public by the White House, Dean requested a meeting with the President to go over soft spots and problem areas. Dean said that his prior conversation with the President had been "sort of bits and pieces" and that he wanted to give the President a picture for the President. The President agreed to the meeting. The President also instructed Dean to try to write a letter like one that would state categorically that the President, Haldeman, Colson and others were not involved.

The transcript of an edited Presidential conversation with the committee in response to its subpoena.

Page 3, or page 163 of the blue book.

Page 3, or page 163 of the blue book, that the President and John Dean in the middle of the last exchange,

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Mr. DOAR. Tab 66.1 is a trans
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Dean said to the President: "I think one thing that we have to continue to do and particularly right now is to examine the broadest"—this is the bottom of page 3. "I think that one thing that we have to continue to do, and particularly right now, is to examine the broadest, broadest implications of this whole thing, and, you know, maybe about 30 minutes of just my recitation to you of facts so that you operate from the same facts that everybody else has."

The President says "Right." Then Dean says, "I don't think—we have never really done that. It has been sort of bits and pieces. Just paint the whole picture for you, the soft spots, the potential problem areas," Tab 67.

Mr. DAVIS. Tab 67, on March 21, 1973, the President met with John Dean from 10:12 to 11:55 a.m. H. R. Haldeman joined the meeting at approximately 11:15 a.m. The following is an index to certain of the subjects discussed in the course of the March 21, 1973, morning meeting:

Possible involvement of Haldeman, Dean, Mitchell, Magruder, Colson, Strachan, and Porter in Watergate matter.....	5-28
Clemency and Watergate defendants.....	61-62
Whether money should be paid to E. Howard Hunt.....	40-42, 105-106

The CHAIRMAN. Are you prepared to play that tape?

Please distribute the transcripts. And the transcripts will be picked up after the tapes have been played.

(Whereupon, a tape recording of a meeting between the President and John Dean, joined later by H. R. Haldeman, March 21, 1973, 10:12 to 11:55 a.m., was played.)

The CHAIRMAN. I think it might be best that we go and vote on this suspension rather than begin with this tape. We will recess for 15 minutes.

Mr. JENNER. The transcripts will remain here, Mr. Chairman?

The CHAIRMAN. Yes, the transcripts will please be left behind.

[Recess.]

Ms. JORDAN. Mr. Chairman, could we take this from the beginning, please? We only covered, we only covered a couple of minutes. Could we start back at the beginning?

The CHAIRMAN. Yes, we are going to start at the beginning.

Have the transcripts been distributed now?

Mr. DOAR. Yes.

The CHAIRMAN. OK, let's proceed with the listening.

[Playing of tape previously interrupted.]

The CHAIRMAN. Mr. Doar, might I suggest that halfway through maybe we should stop for about 5 minutes because this is 1 hour and 43 minutes and is a lot of listening.

Mr. DOAR. Bob, would you stop at the appropriate time?

The CHAIRMAN. Somewhere at the appropriate place.

[Continuation of the playing of the tape.]

The CHAIRMAN. May we have the transcript picked up, please?

Mr. DOAR. Yes sir.

The CHAIRMAN. Mr. Doar, do we have this statement and is it being distributed?

Mr. DOAR. Yes.

The CHAIRMAN. Mr. Doar, I know that we have been waiting patiently for some word from Mr. St. Clair and I know that Mr.

St. Clair was in contact with you by messenger or in some other way as to the matters concerning the request we made for the ITT and the dairy question. I know we are going to be besieged with questions regarding this.

Mr. DOAR. Mr. St. Clair advised me that he had not had an opportunity to talk to the President about this matter and it was necessary for him to talk to the President before he could advise me as to the President's position and that he expected to do that after the meeting today if it were possible.

The CHAIRMAN. I have had distributed a summary of what has transpired today and this is the statement that I intend to be making. I hope that all the members have now in their possession that summary statement.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. You know, I have not even read your full statement, but it just seems to me there is an awful lot of material in your statement that would normally come under the rules of confidentiality. How do we determine who gets to release information from this committee? I mean you are discussing one of the key issues of the whole thing, and I thoroughly applaud it, because I think it all ought to be discussed. But this is a statement you are going to make to the press, is it not?

The CHAIRMAN. That is correct.

Mr. WALDIE. Now, could you give me some sort of guidelines, because I understand that when a member of the committee could say something like this to the press and not breach confidentiality.

The CHAIRMAN. Well, I do not know that this is a breach of the rules of confidentiality. This is not specifically alluding to anything other than summarizing very generally what has transpired today and I think that this certainly would not be a breach of our rules of confidentiality. For purposes, at least, of advising the press and the media as to what has transpired, I think if we worked within these guidelines, none of us would be breaching the rules of confidentiality.

Mr. WALDIE. Mr. Chairman?

Mr. HOGAN. Mr. Chairman, it categorically states that a \$75,000 payment was made to E. Howard Hunt.

The CHAIRMAN. That has been in the transcripts, that has been included in—

Mr. HOGAN. We are assuming that that is a fact?

The CHAIRMAN. This is a matter that was contained in the transcripts and this is a matter that we are just providing the press with insofar as information that we received.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. The testimony is here. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, some of the news media have long been pressing for a rather detailed summary, at least, of what we have been doing. I am inclined to think that something like this—I have not had a chance to really study it carefully, but I am inclined to think that something like this is probably necessary to appease many of them, because they have been concerned that they have not been getting leaks and one or more of the others have gotten leaks. I think it is—I personally think that something like this is a good idea.

Well, that is my feeling. I wanted to ask you about something else. I wonder if I could ask you—there are a number of us who wonder whether this is going to be a meeting and when that meeting is going to be when we can take up the question of how to enforce this subpoena.

The CHAIRMAN. All of these matters that are necessarily going to have to be discussed at a meeting will be included on some agenda that should take place possibly sometime next week. But I think that for the balance of this week and—for the balance of this week, we are going to be preoccupied with more tapes and more presentation of this material that has to do with Watergate and the coverup and through June—through April 30.

Mr. RAILSBACK. Mr. Chairman, if I could just comment, there are alternative ways. I have seen the committee brief on the enforcement of subpoena powers, and to tell you the truth, I do not think it has really gone into detail at all and I think it is too sketchy and I do not think it is complete. I do not think they even took up the question of legislation such as the legislation that we passed for the Ervin committee. But I think that there are many of us who want to get into this and the longer we delay getting into it, the more difficult it becomes that we can expedite. I hope this is something that you do, at least schedule for discussion and possibly an opportunity for us to make motions.

The CHAIRMAN. Well, the Chair does intend to do this. However, I am sure that you recognize that what we are confronted with now is to have this presentation of this detailed information, which I think we first have to have and have it in total before we can go on to consider matters that you are suggesting.

Mr. McCLORY. Mr. Chairman, what time do we meet tomorrow morning?

The CHAIRMAN. Nine o'clock in the morning.

Mr. McCLORY. I move we adjourn.

Mr. SEIBERLING. Mr. Chairman?

Mr. CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Is the committee counsel going to recommend the issuance of a subpoena for the March 17 tape?

The CHAIRMAN. The committee counsel is going to be discussing that matter with Mr. St. Clair. There is some question there and I think it would be perfectly appropriate that this matter first be discussed with Mr. St. Clair.

Mr. DOAR. The tape has already been subpoenaed.

The CHAIRMAN. Yes, the tape has already been subpoenaed.

Mr. SEIBERLING. That was included in the previous subpoena. Thank you.

The CHAIRMAN. There was a question of whether that was left out or not. The committee will recess until tomorrow morning at 9 o'clock.

[Whereupon, at 5:45 p.m., the committee recessed to reconvene at 9 a.m. Wednesday, May 22, 1974.]

IMPEACHMENT INQUIRY

Executive Session

WEDNESDAY, MAY 22, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Robert A. Shelton, associate special counsel; Rufus Cormier, special assistant; Evan A. Davis, counsel; Lawrence Lucchino, counsel; George Rayborn, counsel; Edward S. Szukelewicz, counsel; William Weld, counsel; William A. White, counsel; Allen Schwartz; and Michael Murphy, clerical staff.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. Mr. Doar, before we proceed with your presentation, I know that you have in your possession two letters from Mr. St. Clair regarding the question of ITT and dairy industry requests. We hope that you might enlighten the committee regarding the response that is contained in those letters.

Mr. RANGEL. Mr. Chairman, could Mr. Doar identify the staff members that may be present?

The CHAIRMAN. Yes. Mr. Doar, will you kindly do so?

Mr. DOAR. Mr. Chairman, members of the committee, on my left is Rufus Cormier, and next to him is Larry Lucchino. These gentlemen are both working on the Watergate inquiry, particularly the period from the 22d of March through the 30th of April and they have been with the inquiry staff since around the 15th of January.

Mr. JENNER. Mr. Chairman, Mr. William Weld of Boston is seated behind me. He is our principal man in the field of constitutional law.

The CHAIRMAN. Thank you. Mr. Doar.

Mr. DENNIS. Mr. Chairman, I did not hear what you asked Mr. Doar to talk about. Would you mind saying it again? I did not hear it.

Mr. DOAR. I was introducing to the committee Mr. Rufus Cormier—

Mr. DENNIS. No. No. I do not mean that. But whatever the Chairman said—

The CHAIRMAN. Mr. Doar is going to—

Mr. DENNIS. A substantive matter is what I did not get.

The CHAIRMAN. Mr. Doar is going to give us the summary of responses from Mr. St. Clair concerning our requests on ITT and the dairy industry.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. DOAR. Congressmen, with all of the work that our staff people do I will say to you that it is a pleasure to say that they are substantive matters.

Mr. DENNIS. Well, Mr. Doar, I did not mean to suggest that they were not.

Mr. DOAR. I know you did not.

Mr. DENNIS. I might take the occasion to say that I have the greatest respect for the work of the staff. It is very impressive.

Mr. DOAR. I know that, Congressman. But I just wanted to acknowledge my appreciation to the staff.

Last night Mr. St. Clair delivered to Mr. Jenner and myself two letters dated May 21. The first letter, Mr. Chairman, related to the ITT request. The committee will recall that we requested recorded conversations between February 29, 1972, and April 5, 1972, a total of, a maximum of, 22 recorded conversations. We specified why we thought these conversations were relevant and made it clear that we were interested only in the relevant conversations but that the committee of course would have to review the 22 conversations to determine relevancy.

As I say, late last night Mr. St. Clair sent me this letter.

DEAR MR. DOAR: With respect to your letter of April 19, 1974, relating to the ITT matter, a review has been made of the material heretofore furnished you relating thereto. As you know, voluminous documents have been made available to you from the files of the Department of Justice and the White House relating to the ITT matter. In addition, you have been furnished tapes of conversations that were recorded that comprise the President's participation in the decision whether or not to prosecute an appeal from the adverse lower court decision in this litigation.

It would appear, however, judging from the inclusive dates of February 29, 1972, and April 5, 1972, that the focus of your inquiry has now shifted to a period of time during which the Kleindienst confirmation hearings were in progress. From this we can only infer that you are inquiring into what, if any, participation the President had in connection with the hearings.

We are not aware of any allegations that the President had anything to do with these hearings or the preparation of the testimony before the Senate Judiciary Committee.

With the exception of the conversation among the President, Haldeman, and Mitchell on April 4, 1972, there is no evidence that this subject matter was discussed during any of the conversations covered in your request.

A review of the tape of this conversation of April 4, 1972, will be made available in a transcript and the pertinent portions thereof, if any, will be furnished to you in a few days.

As you know, the President has published a definitive paper that he believes accurately and completely discloses his participation in the ITT matter. In case you do not have a copy, one is enclosed for your information.

Sincerely yours.

Mr. MEZVINSKY. What about dairy?

Mr. DOAR. The letter has the same date.

Dear Mr. Doar:

With respect to your letter of April 19, 1974, relating to the milk support price for 1971 and 1972, a review has been made of the material heretofore furnished you relating thereto. This review discloses that you have already been furnished voluminous documents from the Department of Agriculture and from the White House relating to this matter.

In addition, you have been provided with tapes of the operative discussions during the course of which the decision to increase the support price was reached. The President does not believe that any further production of material could serve any useful purpose.

In this regard, you should be advised that many of the conversations you inquire about were not recorded, since they predate the installation of the recording system throughout the White House telephones and the President's office in the Executive Office Building. A review of the tapes that have been furnished you should satisfy you that they are comprehensive in scope and, in fact, do constitute the operative discussions in this matter.

As you know, the President has published a definitive paper on this subject that he believes accurately and completely discloses his participation in the decision to set the milk support price at 85 percent for 1971-72. In case you do not have a copy, one is enclosed for your information.

Sincerely,

The CHAIRMAN. Mr. Doar, would you kindly have those reproduced and have those distributed to each of the members?

Mr. WIGGINS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I find it difficult to follow the letter in terms of our demands to know just the extent to which it may be even partially responsive and the extent to which it is a flat rejection. Would it be asking too much of counsel to once again describe the things we demanded, and those which have been responded to affirmatively or rejected so that I can focus in my own mind as to the items which have been refused?

The CHAIRMAN. Well, why don't we do it this way so that we can proceed with the presentation, which is on the way, and get to those matters later. We will have copies of those letters distributed, and together with that I am sure we have again reproductions of the requests that were made specifically, so that each member may make a comparison.

Mr. WIGGINS. Yes. That is what I wanted, Mr. Chairman.

Mr. MEZVINSKY. Mr. Chairman?

Mr. Doar, do we have a response regarding our subpoena on the Watergate matter? I know we have a 10 o'clock deadline. Do we have any response to that?

Mr. DOAR. We have had no response yet. Mr. St. Clair said it would come up this morning. I am sure it will be here.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, another gentleman of the staff, William White, who is on the Watergate Task Force, is seated to my rear.

The CHAIRMAN. Welcome, Mr. White.

Mr. DANIELSON. Mr. Chairman, while we are at it, there are two more gentlemen whom I think I have seen, the gentleman with the spectacles over to the left and the one directly behind Mr. Jenner and Mr. Doar in the second row. I do not know who he is. I just want—

The CHAIRMAN. They are both members of the staff. They are both members of the staff.

Mr. Shelton, will you identify them?

Mr. SHELTON. Mr. Allen Schwartz, who is a second year law student at the University of Texas, who just joined us on our clerical staff.

The CHAIRMAN. And Mr. Murphy, Michael Murphy.

OK, Mr. Doar, will you please proceed. I understand the House is meeting today at 11 o'clock.

Mr. DOAR. Yesterday afternoon, members of the committee, you listened to the recording of the President's conversation with John Dean, and during which meeting Mr. Haldeman joined the meeting at about 11:15, and was there through the end of the meeting. You may wonder why we do not have Mr. Haldeman's notes of that meeting. An attempt was made by the Special Prosecutor to secure those notes, but there were no notes produced in response to the subpoena issued by the grand jury, so with that particular meeting, the notes Mr. Haldeman had taken, if he took any notes, there were no—they were not produced. Mr. Davis said it is not clear whether or not he took notes at that meeting, but his habit was to take notes during meetings with the President.

Ms. HOLTZMAN. Mr. Chairman?

Mr. BUTLER. Counsel, is it my understanding that those notes were subpoenaed by the—

Mr. DOAR. By the grand jury.

Mr. BUTLER. Mr. Jaworski and not produced, no response.

Mr. DOAR. I do not know that there was no response. There may have been a response. I will just look into that as to whether there were notes or not.

Mr. BUTLER. Thank you.

Mr. DOAR. Paragraph 68.

Mr. DAVIS. Tab 68, on March 21, 1973, at 12:30 p.m., H. R. Haldeman spoke by telephone to John Mitchell, who was in New York City. In addition to reflecting the 12:30 p.m. call, Haldeman's telephone log for that day also shows a conversation with John Mitchell's office at 4:06 p.m. with a marginal notation, "car—9:30 a.m. [word illegible] National, American 520." Haldeman has testified that he does not recall asking Mitchell on March 21 whether Mitchell was going to take care of Hunt's demand for money.

Mr. DOAR. Tab 68.1 is Mr. Haldeman's telephone log for Wednesday, March 21. And this material came to the grand jury and the second page was produced first, as will appear from the grand jury testimony of Mr. Haldeman, and then subsequent, following additional inquiry by the special prosecutor, the first page of Mr. Haldeman's log was located and produced for the Special Prosecutor. It may be that later in the proceedings we will develop for the committee the facts and circumstances with respect to the production of this document as well as others. But, for now I just want to call your attention to the fact that on the first page there is a record of a call to John Mitchell at 12:30 and then at 4:06 on the second page there is a call to John Mitchell's office with the notation: "car—9:30, National, American 520."

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Doar, do you have Mr. Haldeman's logs for the evening before March 21? There was a reference as I recall it yester-

day that the President or Haldeman mentioned that he had talked, I believe with the President, on the evening of March 20. Do you have any logs that would indicate that?

Mr. DOAR. We do have Mr. Haldeman's logs for that period. I cannot tell you. I do not recall specifically, but I will check into it at the recess at noon and report to you after lunch.

Mr. COHEN. Now has there been any request for any tapes or transcripts of any of the conversations held the evening of March 20?

Mr. DOAR. We have not yet made that request.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, can you tell us what the checkmark means in the column "Action" on these logs? Do you know?

Mr. DOAR. I cannot tell you of my personal knowledge. Mr. Strachan has testified that Mr. Haldeman's practice was, when a call was made or a matter was reviewed and considered, that he made a check alongside the paragraph. It would appear that this would indicate that the calls were completed, but I do not know that as a fact.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, is there any direct evidence that Mr. Haldeman, in fact, asked Mr. Mitchell to take care of Hunt?

Mr. DOAR. There is no direct evidence.

Mr. WIGGINS. Why then do you describe it as he does not recall. That assumes a fact that is not in evidence and would have been subjected to a proper objection.

Mr. DOAR. I think that in his grand jury testimony that is what he says.

Mr. WIGGINS. Well, the point is, the grand jury prosecutor asked an improper question and you carried it over into the summary. The grand jury prosecutor should not have asked that question and it would be subject to an objection.

Mr. DRINAN. Regular order. Regular order.

Mr. WIGGINS. It assumes a fact not in evidence, and it should not be carried forward in the summary.

Mr. DOAR. Well, we did carry it forward from the testimony of Mr. Haldeman in the grand jury.

Mr. WIGGINS. Well, when a prosecutor says do you recall——

Mr. DRINAN. Mr. Chairman? Mr. Chairman?

Mr. BROOKS. Regular order.

The CHAIRMAN. I think, Mr. Wiggins, I think that what we are attempting to do is to present the information and the evidence that has been presented to us which is relevant, and it is relevant since it relates to matters that we are now inquiring into and this is part of a grand jury proceeding and testimony that was presented by Mr. Mitchell himself.

Mr. DENNIS. Mr. Chairman?

Mr. WIGGINS. The point is there is no evidence of anything to be recalled.

The CHAIRMAN. I think that is something that the individual member again will have to resolve in his own mind as to whether or not it was proper at that time but I think that there is no way that the coun-

sel or any member of the staff can now eliminate that information based on anything we know as to whether a question was improper or not at the time.

Mr. DENNIS. Mr. Chairman, may I make an inquiry? It occurs to me that there have been questions from time to time from both sides of the aisle here, including quite a number from the majority. And I wonder if it is going to become the practice here that everytime a critical question or an interest question is asked on this side of the aisle that we are going to have a chorus over there objecting. I cannot understand why a member on the minority cannot ask a question without having a chorus over there yelling regular order.

Mr. RANGEL. Regular order, Mr. Chairman.

Mr. DRINAN. Regular order.

The CHAIRMAN The Chair will protect the rights of every member. And I wish, however, that the questions that would be directed would be for the purpose of clarification and counsel responds, he responded I think to try to be informative. I think that we ought to try to go on from there and not try to make it a line of questioning.

Mr. HUNGATE. Point of parliamentary inquiry, Mr. Chairman. Parliamentary inquiry.

Earlier Mr. Hogan suggested that those of us who have questions could put them in writing and at the first recess they could be handled. I think that that is an eminently sound suggestion and did we agree to follow that?

The CHAIRMAN. Well, the Chair will state that if we did not agree to follow it, now we will agree to follow it.

Mr. McCLODY. Mr. Chairman, could I ask—could I ask this further clarifying question? Mr. Chairman, as far as our procedure is concerned, this is the initial presentation, as I understand it, being presented to us by our counsel. The opportunity for testing the validity, the accuracy of statements will come. We are going to turn to the subject of the evidence in this.

The CHAIRMAN. That is correct.

Mr. McCLODY. And we are not going to pass over this, and this is not the whole case, and therefore, I do not think our position is being jeopardized or we are losing any rights by not cross-examining counsel at this stage.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Well, the Chair would like to make clear once and for always, the Chair has been very liberal up until now, and the Chair will tend in that direction so long as we feel that we can proceed in an orderly fashion. I cannot—I cannot attempt to read the minds of the members when they ask questions.

But, if the questions are not going to be for the purposes of seeking clarification, the Chair is going to call the members' attention to that fact and refuse to have the counsel respond. We will go on from there.

Mr. MARAZITI. Mr. Chairman? This one point.

The CHAIRMAN. What is it?

Mr. MARAZITI. The point is this, that what Mr. Wiggins was trying to do was to clarify—

The CHAIRMAN. Well, the gentleman—we already know what Mr. Wiggins was trying to do so I do not think there is any need for any further clarification, Mr. Doar.

Mr. DOAR. Directing your attention to Mr. Haldeman's grand jury testimony, the date was January 30, 1974. And you see on page 4 of that testimony Mr. Haldeman was asked to direct his attention to the 21st day of March. And if he recalled meeting that day with the President and John Dean, who was at that time counsel for the President and he said:

Yes, I do.

Question. And do you recall entering a meeting which was in progress?

Answer. That's correct.

Question. Now, following that meeting did there come a time when you had a conversation with John Mitchell, who was then in New York City, on the telephone?

Answer. Yes. I am sure there did. Let's see—March 21.

Question. Can you give us the best of your recollection of the time of the telephone conversation and the substance of it?

Answer. I am sure that there was a telephone conversation because one of the results or one of the outcomes of the March 21 meeting with Mr. Dean and the President was a request by the President that Mr. Dean, Mr. Ehrlichman, Mr. Mitchell and I meet that day or the following day to discuss some of these questions and then report back to the President. I feel sure that I called Mr. Mitchell to request his coming down for such a meeting.

Question. What do you recall of the conversation between yourself and Mr. Mitchell?

Answer. That's about all I recall. I am really assuming that there was such a call. I think I called him. It is possible that someone else called him. My general recollection now would be that I had called and said that the President wanted us to meet and asked him to come down.

Question. Is it not the case that you discussed with more particularity the problems about which the President suggested you meet in your conversation with Mr. Mitchell?

Answer. Not that I recall, no.

Question. Is it your testimony that you do not recall saying to Mr. Mitchell in substance that the President requested that you meet as to how to deal with Mr. Hunt's demands for substantial cash payments?

Answer. Yes. I have no recollection of that being discussed.

Question. Is it your testimony that in the telephone conversation with Mr. Mitchell you did not allude in any way to the subject matter about which you would be meeting the following day?

Answer. My recollection is that the subject matter about which we would be meeting was the general subject of how to deal with the overall—what has now become called the Watergate situation, as it stood at that time. I do not recall the point that you raised as being the specific subject for the meeting.

The rest of Mr. Haldeman's grand jury testimony I think the members of the committee would want to read carefully. And then you come to page 15 of the grand jury testimony, pages 14 and 15 which deal with the request for the log of that day. And it is the same tab, members of the committee, 64.2 in which the counsel for the Special Prosecutor's Office asked Mr. Haldeman if he knew where page 1 of his telephone records were and he said that he did not know where page 1 was.

And at that time he produced just page 2. That relates to the fact that later, after that, the grand jury was able to secure page 1 of that log.

Mr. RAILSBACK. Where are you, Mr. Doar?

Mr. DOAR. I am on page 14 and 15 of Mr. Haldeman's testimony. And you might wonder there where page 1 came from, inasmuch as Mr. Haldeman testifies and only identifies at that time page 2.

Tab 68.3 is Mr. Dean's testimony to the effect that after he had a conversation with Mr. Mitchell he had a conversation with Mr. LaRue. And the question was asked:

What was the substance of that conversation?

Answer. Mr. LaRue wanted to know what I was going to do about the problem that had raised and I told him nothing, that I was out of that business.

He then asked me what I thought he should do, and I told him I thought he ought to talk to Mr. Mitchell about it.

Then he was asked:

Now, after the meeting on the 21st with the President, and for a portion Mr. Haldeman, did you learn from anyone whether Mitchell had been contacted with respect to coming down to Washington and meeting with you and Mr. Haldeman and the President and Mr. Ehrlichman?

Answer. Yes, I did.

Question. And when did you learn that?

Answer. Sometime on the 21st. I learned it from Mr. Haldeman. Originally it had been hoped that Mr. Mitchell could come down immediately, but he couldn't come down until the next morning.

Tab 69.

Mr. DAVIS. Tab 69, on the afternoon of March 21, 1973, Dean met with Haldeman and Ehrlichman. Ehrlichman and Dean have testified that the participants at the meeting speculated about John Mitchell's role in the Watergate affair and whether Mitchell's not coming forward was the cause of the beating everyone is taking on the subject of Watergate. Dean and Haldeman had testified that in the late afternoon of March 21, just before their second meeting with the President on that day, Dean told Haldeman that perhaps the solution to the whole thing was to drive the wagons around the White House.

According to Haldeman, Dean also said that they should let all the chips fall where they may, because that would not hurt anybody at the White House since no one there had a problem.

Mr. DOAR. Mr. Ehrlichman's log of 69.1 shows that he was with Mr. Haldeman and Mr. Dean from 3:45 to 6 o'clock and that after that he was with Bud Krogh.

Mr. Haldeman's log, which is fairly illegible, indicates that on the afternoon of that day John Dean and John Ehrlichman met with him.

Mr. Ehrlichman's testimony of 69.3—

Mr. SEIBERLING. Mr. Chairman, I am a little puzzled by this Haldeman log. It seems to have a gap in between 12:45 and 6 o'clock. Can that be explained somehow?

Mr. DOAR. Well, there are missing numbers on the right-hand side of the page. That is they apparently were not included in the Xerox.

Mr. SEIBERLING. Well, that does make a difference. Thank you.

Mr. DOAR. Tab 69.3 is Mr. Ehrlichman's testimony before the Senate select committee in which he does not recall whether the meeting was in Mr. Haldeman's office or his but he said that it largely involved a question of testimony, availability of White House staff people.

He said that Mr. Dean did not report what he had told the President that day to him. He said there was a dispute between he and Mr. Dean with respect to the granting of immunity. And Senator Gurney asked: "Well, why is everyone less innocent, it stopped with Liddy," and this is down two thirds of the way on the page 2742, "Why would people

worry about immunity?" And Mr. Ehrlichman said "We were thinking in terms of Mr. Magruder, in terms of people at the committee. But, Mr. Dean was also implying to us that people in the White House would not come forward and testify freely without immunity."

Senator Gurney asked him if "he mentioned to you who would need immunity in the White House?" And Mr. Ehrlichman said: "No, he did not."

And then on the next page he was asked "What was Mr. Haldeman's reaction?" And he said "Mr. Haldeman didn't express a reaction."

Tab 69.4 is John Dean's testimony before the grand jury on February 14. This is at 69.4, February 14, 1974, and he is referring to this same meeting.

Question. During the course of that meeting, was there any discussion about what your preference might be as to Mr. Mitchell's future actions?

Answer. Yes, there was. The nature of that conversation was that it was felt that Mr. Mitchell should be the one to step forward and stand responsible for the entire Watergate matter, and if he did the problems that had occurred after June 17 would dissipate themselves, and there would be a satisfaction with somebody that was standing accountable for the matter.

Tab 69.5 is John Dean's testimony with respect to that meeting, and 69.6 is Mr. Haldeman's testimony on the meeting where he says that Mr. Dean told him, and this is at 2899, 69.6, that one option "was to draw the wagons around the White House and let all of the chips fall where they may, because that would not hurt anyone in the White House. Nobody here had a problem." That was on the afternoon of March 21, Tab. 70.

Mr. DAVIS. Tab 70, on the afternoon of March 21, 1973, from 5:20 to 6:01 p.m. the President met with Haldeman, Ehrlichman, and Dean. The following is an index to certain of the subjects discussed in the course of the March 21, 1973 afternoon meeting.

Possibility of testimony before a grand jury or before an independent panel established to investigate facts.

Possibility of pardon or clemency for Hunt.

What was being done about Hunt's demand.

Existence of persons with knowledge.

Written report by Dean on which President at some later time could be shown to have relied.

Ellsberg search and seizure may be sufficient for mistrial.

Possibility of Magruder, Chapin, Dean, and Haldeman going to jail.

Possibility of Mitchell stepping forward and making some kind of disclosure.

Mr. SEIBERLING. Mr. Chairman, there seems to be an inconsistency between the timing stated here; 5:20 to 6:01 p.m. and the John Ehrlichman log at 69.1 says that between 3:45 and 6 o'clock, Ehrlichman, Haldeman, and Dean met, and I wonder if that is something, because I missed something, or is that correct?

Mr. DOAR. Well, Mr. Ehrlichman's log covers both the meeting with Dean and Haldeman and the meeting with the President, that followed that meeting.

Mr. SEIBERLING. But Ehrlichman's log does not indicate that the President was involved. That is the only question.

Mr. DOAR. I see. Well, that is an inconsistency.

Mr. SEIBERLING. Thank you. Also, could we get copies of that Haldeman log at 69.2 that have the actual times printed on them, because it does not mean very much the way it is set out here.

Mr. DOAR. Yes.

Mr. SEIBERLING. Thank you.

Mr. RANGEL. Mr. Chairman, may I inquire of counsel?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. As to where are we in getting the comparison that Mr. Waldie requested on the public transcript?

Mr. DOAR. Well, we are working on that, but Mr. Jenner and I are not yet satisfied that it is in a shape to present to the committee. We will have it for you when you return after Memorial Day. We will have those for you.

Mr. OWENS. Mr. Chairman, at the bottom where it says 70.1, is it simply a typo where it says 5 to 6:01? In other words, it is just a 40 minute conversation?

Mr. DOAR. Yes, that's right.

The CHAIRMAN. Ms. Holtzman, you wanted to ask a question?

Ms. HOLTZMAN. I just wanted to note that it is after 10 o'clock, and I wondered whether counsel had yet received a response to the subpoena?

Mr. DOAR. No, I have not.

The CHAIRMAN. Are you distributing the transcript of March 21?

Mr. DOAR. I think they have all been distributed on the afternoon of March 21.

[Playing of tape recording on the afternoon of March 21, 1973, from 5:20 to 6:01 p.m., where the President met with Haldeman, Ehrlichman, and Dean.]

Mr. OWENS. Mr. Doar, could you explain to the committee what your efforts were with regard to these tape recordings, to try to ascertain whether any of them have been doctored?

Mr. DOAR. Mr. Chairman, we have contacted Judge Sirica and asked him, requesting of him that he make available to us the detailed reports of the six experts that examined the original June 20, 1972, tape to see what the basis of their conclusions are with respect to that particular tape. Then our information is that in order to make a further examination of other of these tapes, you have to examine the original tape recording. It is very difficult to do that from a copy. We would have to seek out the originals of these tapes and make an examination by experts to make that determination.

Mr. OWENS. I, for one, believe that is a critical matter. I do not know whether it is appropriate to consider that at this point, Mr. Chairman, but I think that we have an obligation to try to go just as far as our authority permits us to try to ascertain the integrity of some of these key tape recordings.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. I notice several inaccuracies and one striking omission. Just toward the end of the transcript, there is a whole phrase left out. I think it is the President who says, after Ehrlichman says that nobody in the White House had anything to do with the burglary and so on, then he, I think it is, says, "And this happens to be true." Mr. Polk has called my attention to several other inaccuracies and I

noted a few. I wonder if we could sort of improve on these or check them out, anyway.

Mr. DOAR. We will.

Mr. McCLORY. Would it be appropriate for Mr. Polk to work with you on this?

Mr. DOAR. Certainly.

The CHAIRMAN. I think these ought to be called to the attention of the counsel. I am sure any of those inaccuracies should be and will be corrected.

Mr. McCLORY. Mr. Chairman, you see, I am going to be surrendering back my transcript now, so I cannot discuss it.

Mr. HUNGATE. Would the gentleman yield on that point?

Mr. McCLORY. Yes.

Mr. HUNGATE. I find on page 10, line 1, "isn't it something like this" would be "isn't it something like his."

Then further on there is "(unintelligible) people protecting themselves."

Then back here on page 29, line 5, "what kind of sentences would evolve." I think it is pretty clear that it is, "what kind of offenses would evolve."

Mr. RAILSBACK. Mr. McClory, would you yield?

Mr. McCLORY. Yes.

Mr. RAILSBACK. I think it is clear—I gave back my transcript, but I think it is one reference to protecting themselves, rather than what is in the transcript.

Mr. DENNIS. Will the gentleman yield?

Mr. McCLORY. Yes, I yield.

Mr. DENNIS. I think the gentleman has made a very important point on the fact that we do not have the transcript. Now, in the paper again this morning, there is a long article about what, according to some of our colleagues, according to the Post, was revealed on the tape that we listened to yesterday. To me, it conveyed nothing new that I had not learned from the transcript 10 days ago. To others, apparently, it did. But I cannot go back and make a comparison. Nobody can go back and make a comparison and see whether I am right or they are right. I think we have gotten to the point because of all the things that have taken place where we really ought to give serious consideration to the fact whether we ought to give back these transcripts or not. Nobody else is giving them back, in effect; they are giving them away. I cannot double check and you cannot double check. I think we need to think it through.

Mr. McCLORY. Mr. Chairman, I do not want to concur with that, but I would add that members would have the opportunity to go over to the staff headquarters and verify these things and do the kind of detail work that might have to be done in order to get complete accuracy with regard to these transcripts.

I yield back my time.

Mr. DANIELSON. Mr. Chairman?

Mr. COHEN. Mr. Chairman.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Chairman, I would like to ask counsel a question, something that occurred to me listening to this tape. It happened during yesterday's tape.

As I recall, there was a reference to a photograph that was taken that might be damaging as far as the evidence is concerned. Could you tell us what that photograph is or was, if you know?

Mr. DOAR. I think that is the photograph that was taken by Hunt and Liddy out in Los Angeles in front of Dr. Fielding's office and it was delivered by the CIA to the Department of Justice on October 24, 1972, in response to a request by Mr. Silbert after he had talked to Hunt or Liddy about some of their earlier activities.

The CHAIRMAN. I had better recognize Mr. Danielson; then we will take a 10-minute break.

Mr. DANIELSON. I tend to agree with both Mr. Dennis and Mr. McClory on the so-called inaccuracies on which I am certain the staff has done the best possible job. But it seems to me you have to listen to the tape along with listening to the transcript because these variations are so subtle and they move so fast that you have to be terribly careful. I think that should emphasize, Mr. Chairman, the need to get the original tapes wherever we possibly can. It is clear to me by now that tapes mean an awful lot more than written transcripts.

The CHAIRMAN. I think, too, if the members would note those areas where inaccuracies or inconsistencies or conflicts occur, they will then be able to, during the recess or at the end of the day, call this to the attention of counsel or go right to the source, because we do have not only the original transcripts or the original recordings, but we can have it played over again in those particular areas to see whether or not we can clarify that.

Mr. SEIBERLING. Mr. Chairman, the difficulty is when we do not have the transcript, there is no way we can identify these passages or check.

The CHAIRMAN. Well, you can go over to the staff headquarters and you can check it out there instead of taking the time during the course of the presentation.

Now, remember, at some time, the committee, after this phase has been presented, the committee is going to have to settle the question as to whether or not all of this material is going to be made public. Then the rules of confidentiality and all other questions will be settled.

We will take a recess for 10 minutes.

[Recess.]

The CHAIRMAN. The committee will come to order.

The Chair will suggest, since there has been this problem raised of inaccuracies in transcripts, perhaps if each member were to make a notation as to place and page on the transcript and then turn it in for counsel to see, make a notation right on the transcript, I think it would be helpful and they would then try to resolve these differences.

Before proceeding, I have just been handed a letter from the White House, from President Nixon, which is a response to the subpoena. Though I have read the letter, I have not had an opportunity to study it with counsel and we will discuss this later. All I can say at this point is that the request for materials that were included in the subpoena will not be complied with. We will discuss this further after we have had an opportunity to study the contents of the letter in full.

Mr. DOAR. Tab 71.

Mr. DAVIS. Tab 71. On the evening of March 21, 1973, Fred LaRue caused approximately \$75,000 in cash to be delivered to William Bitt-

man, attorney for E. Howard Hunt. Earlier that day, LaRue had called Mitchell when Dean refused to authorize the payment to Hunt, and Mitchell had approved the payment to Hunt.

Mr. DOAR. In this statement of information, we make no attempt or effort to establish the time of day with respect to these calls. The sequence appears to be that Dean called Mitchell the night of the 20th and had that elliptical conversation with him at his apartment, and that then Dean and LaRue talked. Dean says that it was on the—LaRue said it was on the 21st. He does not say what time it was. Dean does not say what time it was.

Then LaRue called Mitchell on the 21st and the payment was approved. When Dean talked to LaRue, he had said that he was out of money business.

I would like to go through—there are two important parts of this paragraph. One is, as I say, the sequence of the calls and the second is the fact that the payment was actually made. The first sections in the book, 71.1 through 71.6, deal with, in part, the fact that the payment was made that evening to Mr. Bittman.

Tab 71.1 is the testimony of Fred LaRue.

Now, the question which the grand jury was trying to determine was the date of that payment and there was a dinner that night at Mr. LaRue's apartment, which was attended by Mr. Millican, by Mr. Unger, who was from Cincinnati, Ohio, and by Mr. LaRue's secretary, Miss Fredericks.

Mr. Millican testified that the payment was made following that dinner. The question was what was the date of the dinner. All of the people that were there were questioned. Miss Fredericks was not questioned, but Mr. LaRue, Mr. Unger, and Mr. Millican were questioned. They remembered that they did have that dinner and they remembered the date of it because they all recalled that at that dinner or during that dinner, Mr. LaRue's new fireplace began to smoke and they almost got smoked out of the apartment.

To establish the fact that this occurred on March 21, Mr. Unger was called. I would like to refer the committee to 71.3 and 71.4 first. Tab 71.3 is the testimony of Sherman Unger, who is from Cincinnati, Ohio. On page 4 of 71.4, he testifies about coming to Washington in late March 1973 and attending a dinner party at the apartment of Mr. LaRue and who were present. He said Mr. Millican was present, Miss Fredericks was present.

Then on page 5, he relates the fact that he was there and the fireplace started backing up and smoke started coming down into the room.

He was asked how long he was in Washington on that trip and he said less than 24 hours. He said it was on the 21st. "I got to Washington around 4:30 on the 21st and left about 11:30 on the 22d."

Then he testified with respect to his diaries. On page 7 of his testimony, he relates how, with respect to his diary on March 20th, he skipped a day, so that on his calendar, as you will see in a minute, he scratched out the 21st and the 22d and made them the 20th and 21st. He testifies as to how that was, and then you will see some other information—his hotel bill at the Carlyle, his chits at the Metropolitan Club, as well as his diary entries and his airline tickets that estab-

lish that he was in Washington from late in the afternoon on the 21st until the morning of the 22d.

That is all behind tab 71.4. He also testified that he had not seen Mr. LaRue for several months before that date and he did not see him for many months after that date.

Looking at 71.4, then, this is Mr. Unger's diary. You see the first page is Sunday the 18th and the next day is Monday, the 19th.

Then on Tuesday, the 20th, he circles the date and says "see next page."

Then on the next page, he crosses out the 21st and says in his handwriting, as he testified, "20th, Tuesday," and he indicates at the top of the page that he is in New York City at the Carlyle.

Then you turn to Wednesday the 21st, on which he crosses out 22d and makes it Wednesday, the 21st. You see the second entry there, "fly D.C., stay at Metropolitan Club, dinner at LaRue's."

On Thursday, the 23d, there is a line across the middle of the page. He testifies in his grand jury testimony that the entries above the line are for Thursday the 22d and the entries below the line are for Friday the 23d.

The next set of entries are his airline tickets, March 21, 1973, New York to Washington. The next ticket, the xerox is illegible, is from Washington to Cincinnati, March 22d. We will try to get a better xerox of that entry.

Mr. JENNER. I think you have been supplied with better xeroxes than came to you in the envelope. You will notice the third xerox, the date March 21 appears.

Mr. DOAR. The next exhibit is Mr. Unger's bill at the Carlyle. The next are bills for room and drinks at the Metropolitan Club. Again these xeroxes are very bad, but they are for March 21. As they come to us from the grand jury.

Again, we will make an effort to get a better xerox than we have here.

Turning back to Mr. LaRue's testimony on 71.1, he is asked if he recalls an occasion in March of 1973 when he participated in the delivery of approximately \$75,000 in cash to a Mr. William Bittman for the benefit of E. Howard Hunt.

He said he did, and was asked who actually delivered the money to Mr. Bittman?

He said Mr. Millican.

Question. Had Mr. Millican delivered money to Mr. Bittman at your request before that occasion?

He said, yes, he had.

He said he was at one time working for the Committee to Reelect the President; when he went off the payroll over there, he just didn't know.

Then he was asked whether Millican had delivered money to Bittman before that time. He said yes, he had.

He was asked if he could recall what had occurred prior to the time that LaRue asked him to make this delivery on that evening. He said yes, "I had invited Mr. Millican over to my apartment for dinner. There were two other people present, my secretary, Miss Fredericks, and Sherman Unger."

He said at the top of the page, regarding Mr. Unger's dinner invitation: "He called me that day when he came to town and I invited him to dinner."

He was asked if there was anything unusual which occurred that night which made it stand out in his mind.

He said, "Yes, one occurrence. I had just moved into a new apartment. I had built a fire in the fireplace and the forced air circulating fan exhaust—the smoke went out and filled the apartment with smoke."

He was asked, after dinner, did he recall the circumstances of his asking Mr. Millican to make another delivery to Mr. Bittman?

He says, "Yes. I called Mr. Millican into the bedroom and I asked him if he would mind delivering a package to Mr. Bittman for me that night."

He was asked what did the package consist of, and he said, "\$75,000 in cash, \$100 bills."

He was asked if Mr. Millican consented.

"Yes."

He said after Mr. Millican left, he called Mr. Bittman and said that there was a package that would be delivered to him that night.

Then he was asked the sequence of telephone calls to Mr. Bittman, whether he had called him earlier. He said he had called him earlier that day to tell him this delivery of the \$75,000 would be made.

Then he was asked whether he spoke to Mr. Dean and Mr. Mitchell that day the money was delivered.

He said, that is correct.

Question. Now, starting with Mr. Dean, can you tell us what Mr. Dean told you in substance?

Answer. My best recollection of that phone call is that Mr. Dean called me. He stated that he had had a request for a delivery of money to Mr. Bittman for Mr. Hunt's attorneys' fees and for Mr. Hunt's expenses, living expenses.

He said:

He indicated to me that he was passing this information on to me for whatever purpose I wanted to make of it, that he was not going to have any further involvement, contact, in the delivery of monies to the so-called Watergate defendants, and that I would have to exercise my own judgment to decide what to do about this request.

LaRue told Mr. Dean that—

Unless I was authorized by someone that I would not make this delivery, at which point he suggested that I call Mr. Mitchell.

Question. Did Mr. Dean in that conversation indicate that there was a sense of urgency about this?

Answer. Yes, I recall that he indicated there was a sense of urgency. To the best of my recollection, he mentioned something to the effect that Mr. Hunt was due to be sentenced, I think within the next 2 or 3 days * * *

He was asked if Mr. Dean identified an amount of money in the course of that conversation.

He said he did—

My recollection is that there was \$75,000 required for attorneys' fees and \$60,000 required for his living expenses.

He was asked if he had a conversation with Mr. Mitchell following that. He said he did.

Then he was asked:

Can you recall to the best of your recollection the substance of that conversation.

He said:

I told Mr. Mitchell of my conversation with John Dean, indicating that Dean was not going to be involved any further in the authorization and distribution of money.

I told Mr. Mitchell that we had had a request for \$75,000 for Mr. Hunt. He asked me what it was for. I told him to the best of my knowledge, it was for attorneys' fees, and he said that under the circumstances, he said, "I think you ought to pay it," which I proceeded to do.

He was asked:

Is it a fact then that you didn't mention to Mr. Mitchell the request for \$60,000?

He said:

To the best of my recollection this is true.

He said:

I think this was a decision I made myself. It was certainly a rather large sum of money involved * * *

He said:

The only amount of money I recall discussing with Mr. Mitchell was the \$75,000 which was delivered.

Question. Was there anything in the conversation you had with Mr. Mitchell by which Mr. Mitchell indicated that he had or had not heard of this request earlier than the time of your conversation?

He said:

Nothing that would indicate to me one way or the other.

He was asked whether he remembered whether Mr. Mitchell was in Washington the day following and he said:

I don't specifically recall.

Then he was asked if he had a recollection of the precise date of the request to Mr. Millican to deliver the money. He said:

The date would be on the day he delivered it. It would have been that specific day.

He said he could not recall the precise day, but he did remember it was the night of the dinner when he had the trouble with his fireplace.

Tab 71.2 is Mr. Millican's testimony in which he describes at page 3 the trouble with the fireplace, the dinner that night, the trouble with the fireplace and then this is at page 3—

Late that evening, as the party was breaking up, did you have a conversation with Mr. LaRue in which he asked you to deliver an envelope to the home of Mr. Bittman?

Answer. Yes.

Question. He gave you the envelope?

Answer. Yes.

He said there was no writing on it, he described the envelope and he said he delivered that envelope that evening and told the grand jury where he delivered it and then he said that he had previously on two occasions made deliveries to Mr. Bittman or Mr. Bittman's mailbox.

At page 5 of his grand jury testimony he said that the first delivery was probably in February and the second delivery in late February or early March.

And then on page 6 he identifies the delivery as being about 10 p.m. or 10:15 when he left Mr. LaRue's house.

Tab 61.3 is the testimony of Mr. Unger which I have reviewed for you.

Tab 71.4 is again the exhibits.

Tab 71.5 is Mr. Bittman's testimony of last August 1973, in which he confirms that he did get a call from a man who identified himself, and this is at page 90 at the top, as Mr. Baker, who asked if he would be home around 11:30 that night and he was asked if he would deliver an envelope to Mr. Hunt. And Mr. Bittman said "Yes, I would." And Mr. Baker, or a man who identified himself as Mr. Baker, that was what Mr. LaRue says was the name he used. "We will leave it in your mailbox and I said fine."

So the next morning he related that he would call Mr. Hunt and tell Mr. Hunt about the telephone call. And this is the procedure that was used for delivering money to Mr. Hunt. And he said that he recalled this happened three or four times during that period.

On page 191 he says that the final delivery came about March 21. He said "I am not certain at all when these envelopes came in except for the last one, because I think it was within 2 or 3 days before he was sentenced."

And at 10.6 is Mr. Hunt's testimony, which confirms the fact that he did, a few days after his conversation with Mr. O'Brien, which the committee will remember we went over yesterday, he received a package of cash amounting to \$75,000. And then at page 111 of Mr. Hunt's grand jury testimony, he said that he had received \$50,000 and then he got one more for \$75,000 on or about the 20th of March.

And he was asked what he did with the money and he said "I had a check issued for \$60,000 to Mr. Bittman and I placed the rest of the money—made it available to the household for household expenditures."

John Dean's testimony is at 71.7. He is testifying about on page 16, about his conversation with Mr. Mitchell on the night of the 19th, whether he indicated one way or another whether Mr. Hunt would be paid. He said "No, he did not."

And then question:

Did you have a conversation with Mr. LaRue?

Answer. Yes, I did.

Question. What was the substance of the conversation?

Answer. Mr. LaRue wanted to know what I was going to do about the problem that had raised, and I told him nothing; that I was out of the business.

He then asked me what I thought he should do, and I told him I thought he ought to talk to Mr. Mitchell about it.

And then the question:

Now, after the meeting of the 21st with the President, and for a portion Mr. Haldeman, did you learn from anyone whether Mr. Mitchell had been contacted with respect to coming down to Washington and meeting with you and Mr. Haldeman and the President and Mr. Ehrlichman?

Answer. Yes, I did.

Question. When did you learn that?

Answer. Sometime on the 21st. I learned it from Haldeman.

Excuse me, Mr. Davis called my attention to the fact that I said the 19th is the conversation with Mr. Mitchell but it was the 20th that that conversation occurred.

John Mitchell's testimony before the Senate select committee is at 71.8. And then if you see the fourth from the bottom line on 1630

Mr. Mitchell said "The March request, I think I probably heard about it through Mr. LaRue, if my memory serves me right."

And then it says at the top of 1631 "It seemed to me that the March request had some amount in the area of \$75,000 which Mr. LaRue described to me that was being requested by counsel for their legal fees in connection with the representation of Mr. Hunt."

And then Mr. Dash asked him: "Did Mr. LaRue ask you what your opinion was or whether you should pay that amount of money to Mr. Hunt or his counsel?"

And Mr. Mitchell said:

Mr. LaRue, to the best of my recollection, put it in this context: I have got this request. I have talked to John Dean over at the White House, they are not in the money business any more. What would you do if you were in my shoes and knowing that he had made prior payments.

I said if I were you I would continue and I would make the payment.

71A.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I would like to know what is the basis in the conversation you have just read for the statement in the original tab that Mr. Mitchell had approved a payment to Mr. Hunt?

Mr. DOAR. I don't think that it is that. I think the basis for that is Mr. LaRue's testimony.

Mr. WIGGINS. All right.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. May I inquire of counsel?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Doar, am I correct that Mr. LaRue gives no precise date for the March payment?

Mr. DOAR. He does not.

Mr. DENNIS. And that Mr. Millican also gives no precise date, is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. And Mr. Bittman likewise gives no precise date, is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. And Mr. Hunt, in fact, says it was on March 20. Is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. And is Mr. Unger the only witness that purports to make it March 21 precisely?

Mr. DOAR. To our knowledge, yes.

Mr. DENNIS. Thank you.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, is there any grand jury testimony of Mr. Mitchell on this point?

Mr. DOAR. No, there is not, not that we have been furnished. We cannot say.

Mr. WALDIE. Has there been an inquiry made to determine this?

Mr. DOAR. Well, we were furnished just this information from the grand jury, and it was only this information. And inquiries with

respect to grand jury testimony about other than this—well, Mr. Jaworski has taken the position that this was the material that was relevant to the inquiry and that he cannot release the other information.

Mr. WALDIE. Has Mr. Mitchell been examined on this point by any of our investigators as to his recollection of the date?

Mr. DOAR. We have not talked to Mr. Mitchell.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. I have a question of Mr. Doar. Since the testimony that you read from Mr. Mitchell indicates specifically that this was for legal fees, I wonder why in your tab 71 you just say \$75,000 in cash and you do not explain what the cash is for. Don't you think it would be better if we stipulate it was for legal fees?

Mr. DOAR. No, I do not think it would. No, I do not think that that would be accurate.

The CHAIRMAN. That would be a conclusion that the counsel would be drawing, and I do not think the testimony suggests that. The testimony talks about many things. But, there is \$75,000 that was delivered in cash.

Mr. Hogan.

Mr. HOGAN. Mr. Chairman, the counsel, counsel, in my view does make conclusions and I have made this point before. But, I think this is a good illustration of what my objection is.

It says "and Mitchell approved the payment to Hunt." What it should say is that LaRue said that Mitchell approved the payment to Hunt. And I cannot see any corroboration in the tabs that Mitchell did, in fact, approve the payment to Hunt. In his own testimony he does not say that.

Mr. SEIBERLING. He just read it a minute ago.

Mr. HOGAN. He does not say that. He says that you can do it, but he does not flatly approve it, as our tab says.

Mr. DOAR. He said "If I were you, I would continue and I would make the payments."

Mr. HOGAN. If I were you, I would do it, but it is not the same thing as saying I authorize you to make the payments.

Mr. SEIBERLING. Regular order.

Mr. DANIELSON. Regular order.

The CHAIRMAN. I think we better continue with regular order. I am sure that these questions are going to continually crop up as to whether or not staff, and we have both Mr. Doar and Mr. Jenner and the rest of the staff, that I think collaborated in the putting together of this testimony as accurately as they can possibly present it to us. And if there are questions I think that these questions are questions that will be raised after the presentation, if there are any.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. I think we better continue with the presentation.

Mr. BUTLER. I have a clarification as to one point of fact. Can we establish the time at which the conversation took place between Mr. Dean and Mr. LaRue and as to the time of day and its relationship to the President's conversation with Mr. Dean?

Mr. DOAR. We have not been able to establish that as yet.

Mr. BUTLER. How do we establish it as to the day it took place?

Mr. DOAR. Mr. LaRue said it occurred on the day that he made the payment.

Mr. BUTLER. It's entirely related to establishing the time of the payment. That's the extent to which——

Mr. DOAR. Yes.

Mr. BUTLER. Now, does Mr. Dean keep a White House telephone log and do we have that?

Mr. DOAR. I think we did secure from the trial up in New York what purports to be Mr. Dean's telephone logs for those 3 days. Is that right?

Mr. JENNER. Yes.

Mr. BUTLER. Well, I will not pursue that any further, Mr. Chairman.

Mr. DOAR. It is a matter we are still inquiring into.

Mr. BUTLER. You will keep us posted, I assume, on your progress. Thank you.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you. Just with respect to clarifying the date, did Mr. LaRue keep any kind of telephone log or diary with respect to telephone calls and/or meetings, and if so, has that been requested because it might clarify that?

Mr. DOAR. I do not believe he did keep any telephone logs.

Ms. HOLTZMAN. Did he keep a diary with respect to that?

Mr. DOAR. We will check into that. I do not believe he did.

Mr. DAVIS. Tab 71A, on April 17, 1973, the President issued the following public statement:

On March 21, as a result of serious charges which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter.

In his address to the Nation of April 30, 1973, the President stated that in March 1973, he received new information regarding the involvement of members of the White House staff in the Watergate affair and that:

As a result, on March 21, I personally assumed the responsibility for coordinating intensive new inquiries into the matter, and I personally ordered those conducting the investigation to get all the facts and to report them directly to me right here in this office.

Mr. DOAR. Tab 72.

Mr. DAVIS. Tab 72, on the evening of March 21, 1973, the President dictated his recollections of the events that had occurred on that day.

Mr. DOAR. I would like to explain to the committee how the committee secured this dictabelt. This came from the grand jury and also from the material from the White House, inasmuch as there was material that had been furnished to Mr. Jaworski by the White House. The subpoena that was issued to President Nixon was a subpoena that followed the language that we used in our subpoenas, that the President produce all tape recordings, dictabelts, memoranda, logs, and notes relating to a particular conversation. And the subpoena referred to the conversation on the morning of March 21, the one that you heard yesterday. And in response to that subpoena, this dictabelt was furnished to Mr. Jaworski, and then in turn it came to us. This is the second dictabelt that the committee has heard.

You remember you heard a dictabelt on the evening of June 20.

The President has testified that it was his habit on many occasions, not every night, to dictate his recollections of the day on a dictaphone. He stated that. He did not testify. Excuse me. He stated that.

Mr. SEIBERLING. Mr. Chairman, has this been made public before?

Mr. DOAR. No; it has not.

The CHAIRMAN. Will you please distribute the transcripts of the dictabelt?

Mr. DANIELSON. Mr. Chairman, for clarification, we have been talking about a dictabelt. The document shows a cassette. Which are we really talking about?

Mr. DOAR. Cassette. A dictabelt cassette.

Mr. DANIELSON. I see.

[Playing of dictabelt recorded by the President on the evening of March 21, 1973.]

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. The 57-second silence, was reason given for the silence?

Mr. DOAR. There is no explanation for that. That is one of the things that the panel was supposed to be looking into, Judge Sirica's court.

Mr. MEZVINSKY. Thank you.

Mr. DOAR. We are trying to get the information on that for you.

Mr. MEZVINSKY. Is that the report that is supposed to be released this coming week?

Will that include the 57-second silence as well as the 18½ minutes?

Mr. DOAR. No. I don't believe it will. I think the report only is confined to the 18½ minutes.

Mr. SEIBERLING. Well, Mr. Chairman, has anyone, have any experts been called upon to analyze the nature of this break?

Mr. DOAR. My understanding is that the experts are analyzing this.

Mr. OWENS. Will they be analyzing the prior dictabelt and a similar, apparently similar—

Mr. DOAR. Yes. Yes.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, is there a way of ascertaining the date that the dictabelts were, in fact, dictated? In other words, it apparently was not done every day, as I understand it, or every evening by the President where he dictated his recollections of the day. Is there any way of ascertaining whether, in fact, this was dictated on the evening of the 21st?

Mr. DOAR. Well, only by inquiring of the President. I don't know—the response to the subpoena just delivered this material, as I understand it.

Mr. WALDIE. Well, I am puzzled, and I may have missed your original explanation on how it got into the hands of Mr. Jaworski, but was the request from Mr. Jaworski and the response which was sent, this dictabelt, sufficient to persuade you that there is no question that it was, in fact, dictated on the eve of the 21st?

Mr. DOAR. Oh, I don't—I can't—I don't—I just have the material here. It came as it was from Mr. Jaworski. This was a dictabelt furnished on the 21st.

Mr. WALDIE. Is there any way that the committee can ascertain the date the dictabelt was, in fact, dictated?

Mr. DOAR. Well, the only way is to ask the person who dictated it what his recollection is, or to examine the people that kept the dictabelts or transcribed them in the White House, if they were transcribed. Some were and some were not.

Mr. WALDIE. Just one final question. The last dictabelt that we heard was not dictated, in fact, on the date that it related the events. Is that a correct recollection on my part?

Mr. DOAR. I do not think it is; no.

Mr. WALDIE. Was that dictated the night of the 20th of June?

Mr. DOAR. It was purported to be dictated the night of the 20th of June.

Mr. WALDIE. Purported by whom?

Mr. DOAR. It was furnished in response to the subpoena to the grand jury.

Mr. WALDIE. The subpoena in that instance, knowing this, the subpoena did not request dictabelts, did it?

Mr. DOAR. I think, yes; it did.

Mr. WALDIE. Did it request this dictabelt, the one we just heard, in the subpoena?

Mr. DOAR. It did, but it did not request; it just asked for all notes, memoranda, transcripts, dictabelts relating to a particular recorded conversation.

Mr. WALDIE. All right then, the last question. In response to that subpoena there is no way of knowing whether in fact it was dictated, this dictabelt, on the date of the events that it recalls, is there?

Mr. DOAR. That is correct.

The CHAIRMAN. Mr. Doar, can we finish this? Did you have any other comment regarding the cassette?

Mr. DOAR. No. Paragraph 73.

Mr. DAVIS. Tab 73, on the morning of March 22, 1973, at 11 a.m., H. R. Haldeman, John Ehrlichman, John Mitchell, and John Dean met in Haldeman's office. Haldeman, Ehrlichman, and Dean had testified that at this time Mitchell indicated that E. Howard Hunt was not a "problem any longer." Mitchell has denied making such a statement at this meeting. According to Ehrlichman and Haldeman, Mitchell stated that the administration's rigid executive privilege policy was untenable both from a legal and from a political standpoint because it appeared to the public to be a coverup on the part of the President.

Haldeman testified that most of the discussion at the meeting concerned approaches to dealing with the situation, rather than a review of the facts.

Mr. DOAR. These four men met in Mr. Haldeman's office on the morning of March 22, prior to the time that they went in to have a meeting with President Nixon. There is a dispute as to who asked Mr. Mitchell as to whether or not Mr. Hunt's demands had been taken care of. Mr. Dean said that Mr. Ehrlichman made the request and Mr. Ehrlichman and Mr. Haldeman testified that the conversation took place between Mr. Mitchell and Mr. Dean.

All three of the gentlemen, Ehrlichman, Dean, and Haldeman said that Mr. Mitchell said that Hunt was not a problem any longer, or words to that effect.

Tab 73.1 and 73.2 are the logs that show the meeting. Tab 73.3 is Mr. Dean's testimony before the grand jury. And if you look at page 18 of 73.3, Mr. Dean says:

As we were sitting down, Mr. Ehrlichman said, in sort of an off-hand—not particularly focusing anyone's attention on it—manner, but something that everyone could clearly hear, to Mr. Mitchell, or just openly to the air that he wondered about Mr. Hunt's problem and how that was—something to that effect—and Mr. Mitchell responded immediately that he didn't think that Mr. Hunt was a problem any more.

And then on 73.4 at page 36 Mr. Haldeman says at the second paragraph:

I do recall, and I think I have testified to an interchange, as I recall it, between John Dean and John Mitchell where the question was asked in some way "what about the Hunt problem," and Dean saying "what's the situation with Hunt," or "what's happened to Hunt's problem," or something and Mitchell saying to the effect of "that's no problem," or "that's taken care of," or "that's okay."

And then at the bottom of the page Mr. Haldeman was again asked about his recollection of the conversation on the previous day with Mr. Mitchell and he said he does not, "I don't recall that."

And then down at the bottom of the page he is asked:

Well, it is fundamental to your meeting on the 22d as to what would be done with Mr. Hunt or what position the White House would take with respect to Mr. Hunt?

Answer. No, that's not my recollection of March 22d. It is not my recollection that that was fundamental or even consequential. The points of those discussions on the 22d were on a much broader subject which was dealing with the prime question of the White House and so on.

And then 73.5 is Mr. Ehrlichman's testimony in which he says that Dean and Mitchell had a brief passage, very indirect terms, where they were talking about whether or not it was taken care of and he testified he talked, as you recall, he talked to Dean the day earlier about it. And he assumed that they were talking about the Hunt problem.

Mr. DOAR. Now, Mr. Jenner suggests I read at the bottom of page 67 the question and answers:

What was said, the manner or the words said, that caused you then and causes you now to relate that to Hunt's threat.

Answer. Well, that was on my mind at this time obviously. Dean had said he was going to talk to Mitchell in our conversation on the 20th, so when Dean said: "Is that taken care of," or "Is that matter taken care of?" Or "Are you working on that"? Or something of that kind, I assumed that that is what he was talking about.

Tab 73.6, members of the committee, is inserted in the wrong paragraph. It comes up in the next paragraph or the paragraph after that. We will refer to that later.

Then 73.7 is Mr. Haldeman's testimony before the Senate select committee. Also 73.8 is Mr. Ehrlichman's testimony.

Tab 73.9 is Mr. Dean's testimony about this meeting just prior to the time that the three men went in to meet with the President. Tab 74.

Mr. DAVIS. Tab 74, on or about March 22, 1973, John Ehrlichman met with Egil Krogh at the White House. Ehrlichman assured Krogh

that Howard Hunt was stable or more stable, that his recommendation was just to hang tough, and that Hunt was not going to disclose all.

Mr. DOAR. Mr. Krogh's testimony is 74.1, the bottom of page 10, which has been retyped.

Question. And did you then have a telephone conversation with Mr. Ehrlichman on the 22d?

Answer. Yes sir, I did. It was in the late afternoon sometime. I received a call from him and he indicated to me that Mr. Hunt was, apparently, stable or more stable and that his recommendation would be just to hang tough—that is the precise words he used in that telephone conversation.

Question. Did Mr. Ehrlichman indicate to you that he had learned from Mr. Mitchell, in substance, that Mr. Hunt was not going to blow?

Answer. That is correct. I am not sure exactly what the words were that he used, but the clear impression I derived was that Mr. Hunt was stable and that he was not going to disclose all, and I believe the opportunity would have been the next day at his sentencing hearing in the U.S. courthouse.

Question. Now, did you, thereafter, have a telephone conversation with Mr. Dean?

Answer. Yes sir, I did. I am not sure whether he initiated it or I did, but, in any event, as I had had an independent conversation with Mr. Dean earlier in the week, I wanted to find out from him what he felt would be the appropriate thing to do.

It was a short conversation. He told me, "Bud, now is not the time to do anything rash," which I interpreted to mean, do nothing, and I didn't.

Question. And that was also in the context of Mr. Hunt not going to blow the lid off, at least on any eminent prediction of time?

Answer. I assume that is so.

Tab 74.2 is Mr. Ehrlichman's testimony. At the top of the page, page 2551, he indicated that he recalled inquiring of Mr. Young as to what information Mr. Hunt had and what in effect he was going to say. He said he went into this in considerable detail.

That finishes the book, Mr. Chairman.

Mr. OWENS. What about the prior paragraph?

Mr. DOAR. That is on tab 76.

The CHAIRMAN. Do we have a tape recording for this?

Mr. DOAR. Yes, sir; it is a long tape. We have about 13 or 15 paragraphs to go over.

The CHAIRMAN. The committee will then recess until 2:15 p.m.

Mr. DANIELSON. Are we done with this book?

Mr. DOAR. We are done with this book.

The CHAIRMAN. Before the committee leaves the room, I would merely like to counsel against making any comments about the letter I received from the White House, because as I have stated, I have not had an opportunity for the counsel to study it. I intend to distribute it later this afternoon when we have reproduced copies of the letter. But I think in all fairness, while it does say the President does not intend to comply with the subpoena, concludes with "he stands ready to cooperate with written interrogatories," and so on.

I think it best that we not make any mention that we have gotten a reply.

[Whereupon, at 12:10 p.m., the committee recessed to reconvene at 2:15 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order and we will proceed.

I want to announce that I have had distributed for each member the letters from Mr. St. Clair to Mr. Doar relating to the question of our request for the dairy industry material and the ITT material.

I have also instructed that the letter from President Nixon to me concerning the response to the subpoena be distributed to each of the members, and that will be distributed now.

I might also announce to the members that I have already heard the White House has made the letter public.

Mr. Doar.

Mr. DOAR. Should we proceed?

The CHAIRMAN. Will you?

Mr. DOAR. We are now in book IV, volume 1. This will be the period from March 22 through April 30 in this book.

This morning, members of the committee, I was asked whether or not we requested in our request the conversation on the evening of March 20 between Mr. Haldeman and the President and we did request that conversation, along with a number of other conversations, and that is in the justification memo that all of the members of the committee have.

Mr. SEIBERLING. Have we subpoenaed it, Mr. Chairman?

Mr. DOAR. No; we have not subpoenaed it.

Mr. SEIBERLING. Any reason why we haven't subpoenaed it?

Mr. DOAR. Well, the practice we have followed is for the committee to consider subpoenas with respect to material as we come along, and so that the committee will have as much justification with respect to the relevancy of the subpoena, of the materials as we can provide to the committee. And at the appropriate—

The CHAIRMAN. But more specifically, the committee has not acted on that request for subpoena.

Mr. SEIBERLING. But there is no other reason. That is why I asked the question.

Mr. DOAR. Tab No. 1.

Mr. DAVIS. Tab No. 1, on March 22, 1973, from 1:57 to 3:43 p.m., there was a meeting among the President, John Mitchell, H. R. Haldeman, John Ehrlichman, and John Dean. The following is an index to certain of the subjects discussed in the course of that meeting:

Nature and purpose of a written report on Watergate-related matters to be drafted by John Dean.

White House contacts with the Senate select committee and discussion of the activities of that committee.

White House position on doctrine of executive privilege, and possible changes in that position.

White House relationship to future grand jury investigations.

Reference to White House approach to disclosure and "modified limited hangout" and other discussion relating to disclosure.

Mr. DOAR. Should we distribute that transcript?

The CHAIRMAN. Please distribute the transcript.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. The gentleman in the dark blue suit behind me is Mr. Ed Szukelewicz, a member of the staff and former member of the Department of Justice for many years, and he has worked in this area, and we brought him this afternoon.

Mr. DOAR. And, Mr. Chairman, the gentleman on my left is George Rayborn, also a former member of the Department of Justice, resident of Mississippi, and also a former employee of the U.S. attorney's office in the southern district of California.

Do you want to take a recess in this one?

The CHAIRMAN. Yes.

[Playing of a tape of March 22, 1973, from 1:57 to 3:43 p.m. of a meeting among the President, John Mitchell, H. R. Haldeman, John Ehrlichman, and John Dean.]

The CHAIRMAN. The bells have rung and the second bells will be ringing and I think we had better recess until we have answered the rollcall.

[Short recess.]

Mr. DOAR. Mr. Chairman, members of the committee, this tape is a tape that was done in the President's office in the Executive Office Building.

As the tape goes on, the sound gets louder. The noise you will hear, the voices are so low that the machine shuts off automatically and that whirr is when the machine starts on again when it is activated. The same was true of the tape this morning. It was in the Executive Office Building.

Mr. COHEN. May I ask a question, counsel?

At this point in time, had there been a disclosure to the Senate Watergate Committee that there were actual recordings of conversations?

I am wondering about the first statement in the beginning?

Mr. DOAR. No, there was not.

We are going to start up at the top of page 14.

[Whereupon, a tape recording of a meeting among the President, John Mitchell, H. R. Haldeman, John Ehrlichman, and John Dean, on March 22, 1973, from 1:57 to 3:43 p.m., was heard by the committee.]

The CHAIRMAN. We will recess for 10 minutes.

[Recess.]

Mr. JENNER. We are at the top of page 58, Mr. Chairman.

[Continue hearing tape.]

Mr. McCLODY. Mr. Chairman, I wonder if I might ask counsel a few questions about this transcript.

The CHAIRMAN. Yes.

Mr. McCLODY. Where did this tape come from? Did this come from the grand jury or from the Special Prosecutor?

Mr. DOAR. It came from the grand jury and also from the White House.

Mr. McCLODY. We got the tape from the White House?

Mr. DOAR. A copy of it.

Mr. McCLODY. We got a copy of the tape from the White House?

Mr. DOAR. Yes.

Mr. McCLODY. Was the entire tape that is exhibited here on the transcript, was that presented to the grand jury as well as to us?

Mr. DOAR. Whatever we received, whether it was presented or not, we do not know.

Mr. McCLORY. I am curious about the final several pages of the transcript, which I would—I am wondering about those as far as being relevant to our inquiry. Were they included in the material presented to the grand jury?

Mr. DOAR. We do not have any idea. We do not have any idea.

Mr. McCLORY. I see. This decision was made by the chairman and the ranking member as far as this transcript is concerned?

Mr. DOAR. All of the decisions for excising were made by the chairman and the ranking minority member.

The chairman and the ranking minority member's standards for taking material out were national security, ethnic slurs, references to the judiciary, and other things. But we did not take out political comment.

Mr. DRINAN. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I understand that yourself and Mr. Hutchinson reviewed these tapes preliminarily and had certain criteria for excising material that you deemed to be unrelated to our inquiry.

The CHAIRMAN. That is correct.

Mr. WIGGINS. I realize that imposes a burden on you and you have to exercise discretion, but I want to protest. I think that the inclusion of the last three or four pages of this has obviously nothing to do with our inquiry and a discussion of political personalities in a political context is going to invite problems. I would just urge you, Mr. Chairman, in the future to exercise your discretion in such a way as not to present materials such as we have heard in the last 2 or 3 minutes.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. I might say without in any way defending the position that we have taken, both Mr. Hutchinson and myself, that we felt that this material that is included here certainly in no way was going to be released by the members of the committee. It still is going to be confidential insofar as committee members are concerned.

All members are certainly privileged to go see or hear the rest of the tapes and see the transcripts from here on in, but we thought that the material that really was of concern to us that should not be included would be material that the White House was concerned with, material that is of national security, material that in our judgment really had no relevance, and where there were ethnic slurs. I think in all, when you consider that we have gotten through a number of tapes and a number of transcripts, the fact that this was not edited out, I think does not in any way cast any—

Mr. WIGGINS. I would urge you, Mr. Chairman, to exercise your discretion in a different way, because I think disclosing this information would show that you are—it is incorrect, everybody knows that, and we ought not to disclose this. It would just invite trouble and we ought not to—

Mr. SEIBERLING. May I say, as a Democrat, I do not resent Mr. Nixon's slurs on the Democratic Party at all. I am proud of them.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Were there any occasions, Mr. Chairman, that you and the ranking minority leader were required to use your authority to delete or excise material on the basis of national security grounds?

The CHAIRMAN. Yes, there were.

Mr. CONYERS. And am I correct in assuming that those excisions made by yourself and the ranking minority member are reviewable individually by the members at the——

The CHAIRMAN. All the material is available.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. I think this is so explosive that I want to make a couple of comments.

First, I think it is quite relevant and I am glad it was left in, because on page 81, the President of the United States says, "The whole theory has been containment, as you know, John."

I think there are other things here where, frankly, I think if we had the entire text, if we had somebody dig into these unintelligibles and give us anything more, it might be really quite relevant.

I found it astonishingly relevant and I would like to know, really what some of these unintelligibles are, if in fact, they can be decoded.

Mr. Chairman, if I may, I would like to ask our counsel about a specific thing on page 79, where John Dean says to the President "I went over to Ziegler's office. They have an office over there. Paul O'Brien will be down here in a little while to see you. I have been over to Ziegler's office setting this up now."

Would the counsel tell me who Paul O'Brien is and is he going to see the President?

Mr. DOAR. Counsel is counsel for the committee.

Mr. DRINAN. For CRP?

Mr. DOAR. Yes.

Mr. DRINAN. I just wanted to follow up on this lead. I had never known that he was going to see the President that day? I mean is this very relevant to the transfers of the money the night before?

Mr. DOAR. He was representing John Mitchell. He may have been coming over to see John Mitchell.

Mr. DRINAN. But "to see you." Was John Dean talking to the President or to John Mitchell?

Mr. DOAR. It is our impression that he was talking to John Mitchell.

Mr. DRINAN. All right, thank you.

The CHAIRMAN. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I have just two brief questions to ask, Mr. Doar. Can you state to the committee that as a matter of fact, these whirring noises we continually hear are products of the machine being activated by voice and then deactivated, or is this something you are assuming?

Mr. DOAR. Well, I am assuming. I can tell you that this is what our consultants tell us, it is what explains those whirring noises.

Ms. HOLTZMAN. Thank you. I have just one further question.

At least on pages 90 and 91, I was able to make out a number of those unintelligible portions, in fact whole sentences. I would hope the staff

might review this whole transcript again to see if they can dig out these unintelligibles.

Mr. OWENS. I would join in that.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I apologize. I was going to ask if we had gotten a response from Mr. St. Clair on the June 4, 1974, partial——

The CHAIRMAN. No, we have not.

Mr. RAILSBACK. Mr. Wiggins says we have.

The CHAIRMAN. On June 4?

Mr. DOAR. March 17, we have gotten a response with respect to the subpena.

Mr. RAILSBACK. I got the idea yesterday that you felt we had only received a partial transcript of March 17 and you were led to believe there was some other evidence that there may be more Watergate-related matters that were not produced. You said you were going to talk to Mr. St. Clair and I wondered if you had a chance to do that.

Mr. DOAR. I did talk to him and Mr. St. Clair is checking that. My understanding is if there is additional material with respect to Watergate on the March 17 transcript, that will be furnished—a transcript, a White House-edited transcript, will be furnished.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I confess to sharing some of the reservations that Mr. Wiggins raised on the latter portion of the materials that the White House did not include in their transcript. I think they cut out an awful lot that was relevant, for reasons that I do not understand. But I think we did include in fact materials that were not relevant.

I understand your standards today for excision—national security, ethnic reference, or comments about the Judiciary. But I am not sure I understand your standards for inclusion. Can you tell me what those are?

The CHAIRMAN. Well, we have included everything else, naturally. I think there are portions in there, sentences interspersed, that would have just hung out like dangling nowhere if we had excised the rest of it.

However, remember, the committee will still make its ultimate judgment as to whether or not it wants to disclose this material in toto when it has to wrestle with the question as to whether or not it wants to make public the information that has been presented and the transcripts.

Mr. WALDIE. Then, may I make one other request that has nothing to do with including matters that do not seem to be relevant. But when there is an exercise of judgment on the part of you and Mr. Hutchinson as to what you excise, could you ascribe for the committee's information which of the three categories you found the material objectionable? In other words, could you tell us as we are moving through and all of a sudden find something excised that it was excised because it was a racial slur, a national security, or a judicial reference?

Mr. CHAIRMAN. I do not believe we can do this at that time, but we certainly can go back over the record and——

Mr. WALDIE. I do not mean today, but in the future, it would be helpful.

The CHAIRMAN. Yes, we can do that.

Mr. WALDIE. That would be helpful, I think, for those of us who are trying to understand.

Mr. McCLODY. May I make one other suggestion? That is this, that anticipating that perhaps these transcripts may become public at a later time, especially when we go into open hearings, would it not be possible to consider the excising of additional irrelevant materials which——

The CHAIRMAN. Of course, the committee has——

Mr. McCLODY. I would like you, Mr. Chairman, and the ranking member and counsel to consider that, because as you can tell from especially this side of the committee, we are concerned and feel very strongly that some of those materials are offensive, they are irrelevant, unnecessary, and in my opinion, prejudicial.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. I agree with much of what has been said about the last several pages there. I think the Chair and the ranking member probably did right by leaving it in, because there are a few interspersed remarks that might be relevant. But I think this might indeed be a test case of whether 38 lawyers can keep their mouths shut on the evening news tonight, too. There ought not to be anything about this that we read in the paper or hear on the news. I do not think we need to pledge ourselves and you to abide by our rules, but I think we ought each one of us to examine our own intentions and our own statements after the day is over.

The CHAIRMAN. The committee will recess until 9:30 tomorrow morning.

[Whereupon, at 5:05 p.m., the committee recessed to reconvene at 9:30 a.m. Thursday, May 23, 1974.]

IMPEACHMENT INQUIRY

Executive Session

THURSDAY, MAY 23, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, and Maraziti.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

I understand we have about 35 paragraphs to go through today—is that correct, Mr. Doar?

Mr. DOAR. Thirty-two.

The CHAIRMAN. Is it possible to complete those 32 paragraphs before the House convenes this afternoon?

Mr. DOAR. Yes, I hope we will. We will move along very quickly.

The CHAIRMAN. I hope we can move along. Proceed.

Mr. DOAR. Before beginning, I would like to take, Mr. Chairman, members of the committee, just a minute to review for you the presentation of the books.

We are now in book IV. Book I dealt with the chronology from December 2, 1971, to June 17, 1972. Book II dealt with certain matters which occurred between the Watergate break-in and the 8th or 9th of February 1973. Book III then went back and dealt with other matters which occurred between the Watergate break-in and the 9th of February 1973, and then continued chronologically until March 22, 1973.

For the period March 22 forward to April 30 it will be presented in another book, book IV. This morning, I was asked what was the

significance or the pertinence of including the statements of the President on the 17th and 30th of April 1973, which you will remember we included at the conclusion of the presentation yesterday at Tab 71A[72]. Well, you remember that the President said that "On March 21, as a result of serious charges which came to my attention, I began intensive new inquiries into the whole Watergate matter."

He said that—this is in March of 1973:

New information regarding members of the White House staff came to my attention and I specifically assumed the responsibility of coordinating in terms of the new inquiries into the matter and I have personally ordered investigators to get all the facts and report them directly to me.

This was included for two reasons: First to show you what the President himself said he knew on March 21, and second, to explain to you why we have made a new book for the period March 22 to April 30, the period that the President himself took charge of the Watergate investigation.

So book IV deals with the period from the 22d of March through the 30th of April, the date that Attorney General Kleindienst resigned and Mr. Richardson was appointed the Attorney General. Subsequently, Mr. Cox was appointed the Special Prosecutor.

So we look at the period now from March 22 through April 30. Paragraph 2.

Mr. DAVIS. Tab 2; on March 22, 1973, during the meeting specified in the preceding paragraph [see tr. p. 578], the President telephoned Attorney General Kleindienst and spoke to him from 2:19 to 2:26 p.m. According to the White House log of meetings and conversations between the President and the Attorney General, except for the President's Cabinet meeting on March 9, the last previous meeting or conversation between the President and Attorney General Kleindienst occurred on March 1, 1973. The President directed Kleindienst to be the administration's contact with Senator Howard Baker in connection with the hearings to be conducted by the Senate select committee. He asked Kleindienst to give Senator Baker "guidance," to be "our Baker handholder," to "baby-sit him, starting in like, like 10 minutes."

Mr. DOAR. All of the committee members heard the recorded part of that conversation. It started in the afternoon of March 22. Tab No. 3.

Mr. DAVIS. Tab 3; on the morning of March 23, 1973, Judge John Sirica read in open court a letter that James McCord had written on March 19, 1973. The letter alleged in part that political pressure to plead guilty and remain silent had been applied to the defendants in the Watergate trial; that perjury had occurred during the trial; and that others involved in the Watergate operation were not identified when they could have been by those testifying. At this time, Judge Sirica deferred final sentencing of all defendants except Gordon Liddy. Judge Sirica stated that he would weigh as a factor in final sentencing the defendants' cooperation with the ongoing Watergate investigations.

Mr. DOAR. The last sentence of that paragraph might better read, "Judge Sirica stated that in imposing sentence, he would weigh as a factor, the defendants' cooperation with the ongoing Watergate investigations."

Though I will not stop to read it, the committee members might well want to look at Judge Sirica's—the transcript of that hearing, because on—this is at 3.2. On page 5 of that transcript, you have Mr. McCord's reasons or charges with respect to the way the trial was conducted. You will see that he charges political pressures to plead guilty and remain silent; perjury occurring during the trial; that persons were not identified that could have been by those testifying; that Watergate was not a CIA operation; that statements were made by witnesses which left the court with the impression that he was stating untruths or withholding knowledge when, in fact, they were only honest errors.

I would like to call the committee's attention also on page 37, where Judge Sirica explains the theory or basis upon which he deferred sentencing to see in what way and to what extent the defendants would cooperate with the Senate select committee and other official agencies investigating this matter. He cited Judge Ferguson from California, I believe, the Southern District of California—this is at page 37—who had before him guilty pleas of three sergeant majors of the Army with respect to corruption charges leveled against them in connection with the way they handled noncommissioned officers' funds.

On page 38, Judge Ferguson said, "I want to do all I can to insure that in future wars or future military operations that the system, the system itself, prohibits the conduct to which you have entered your guilty pleas."

Then he indicated that the sentence he imposed would depend—this is on page 39—"would depend upon your cooperation."

At the bottom of 39, Judge Sirica says:

Now I believe that the Watergate affair, the subject of this trial, should not be forgotten. Some good can and should come from a revelation of sinister conduct whenever and wherever such conduct exists. I am convinced that the greatest benefit that can come from this prosecution will be its impact as a spur to corrective action so that the type of activities revealed by the evidence at trial will not be repeated in our nation.

Tab 4.

Mr. DAVIS. Tab 4; on the morning of March 23, 1973, members of the press attempted to question John Dean regarding Patrick Gray's testimony at his confirmation hearings on the previous day that Dean "probably lied" when he told FBI agents on June 22, 1972, that he did not know whether Howard Hunt had a White House office. Later in the morning of March 23, Dean was informed by Paul O'Brien, attorney for CRP, that a letter from James McCord to Judge Sirica had been read in open court. Dean has testified that he then telephoned Ehrlichman to inform him of McCord's letter and that Ehrlichman stated he had already received a copy. In the early afternoon of March 23, the President telephoned Dean from Key Biscayne. Dean has testified that the President told him, "Well, John, you were right in your prediction."

Dean has testified that the President suggested that Dean and his wife go to Camp David and get some relaxation, and that Dean analyze the situation and report back to him.

Mr. DOAR. I would like to refer to tab 4.3, which is an abstract of a log of the President's meetings and telephone conversations with John

Dean. You see that from 12:44 to 1:02, the President talked long distance with Mr. Dean.

From 3:28 to 3:44, the President talked long distance with Mr. Dean when he was at Camp David.

The fact of the matter is that although the call was placed by the President, actually, Mr. Haldeman and he had the conversation.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. With respect to the last sentence in tab 4, what is the citation for that? Are you saying that Mr. Ehrlichman is the one who made the suggestion and not the President?

Mr. DOAR. No, I am not. The citation for that is John Dean's testimony to the effect that the President called him and suggested he go up to Camp David.

Mr. McCLORY. You do not have any evidence of the President telling him or suggesting that?

Mr. DOAR. We have these two things. We have the fact that the President made the first call and the second thing is that within 2 hours after the call, John Dean was at Camp David. I think that there is no indication that I know of in the procedures that John Dean could have gone up to Camp David on his own, but we only say that John Dean testified to this. Tab No. 5.

Mr. DAVIS. Tab 5; on March 23, 1973, the President telephoned Patrick Gray at 1:11 p.m. According to the President's logs, the last time the President had spoken to Gray was on February 16, 1973, Gray has testified that he cannot remember the President's precise words, but that the call was a "buck-up call" in which the President told Gray that he knew the beating Gray had taken at his confirmation hearing; that it was very unfair; and that there would be another day to get back at their enemies. Gray has testified that he remembered distinctly that the President said to him, "You will remember, Pat, I told you to conduct a thorough and aggressive investigation."

Gray has also testified that from March 21 on, he received no order from the President or anyone implementing a Presidential directive to get all the facts with respect to the Watergate matter and report them directly to the President.

Mr. DOAR. Committee members may wish to read 5.3—that is Mr. Gray's testimony—with respect to this testimony. It is set forth at page 3489, where he is questioned by Senator Weicker, and 3490, I think the whole page there. It is not possible to summarize it.

Then again, he is questioned again at page 3506. He does say that during the conversation, the President said to him, "You will recall, Pat, that I told you to conduct a thorough and aggressive investigation." Mr. Gray said he had the feeling that it related back to that conversation he had on July 6, when the President was out at San Clemente. Tab No. 6.

Mr. DAVIS. Tab 6: on March 23, 1973, the President met with H. R. Haldeman in Key Biscayne, Fla., from 1:25 to 1:45 p.m. and from 2 to 6:30 p.m. Haldeman has testified that on March 23, the President told him that he had been informed about the McCord letter and its contents, and that the President asked Haldeman to call

Charles Colson to ask if Colson had ever offered Howard Hunt clemency or had any conversation with Hunt about clemency. Haldeman telephoned Colson sometime before 2:15 p.m. on March 23 and asked what commitment Colson had made to Howard Hunt with respect to the commutation of his sentence. Colson reported to Haldeman on this matter. Immediately after this conversation, Colson dictated a memorandum of the conversation for the file. Colson's memorandum states, in part, that he told Haldeman that he made no representations nor used anyone else's name in the conversation; that he had only told Hunt's lawyer that as long as he was around, he would do anything he could to help Hunt. Colson's memorandum states that Haldeman asked what would happen if Hunt "blew" and that Colson replied that "It would be very bad" and that Hunt "would say things that would be very damaging." Colson's memorandum states that Haldeman replied, "then we can't let that happen."

Mr. DOAR. Tab 6.1 shows the meeting between the President and Mr. Haldeman at 1:25 to 1:45, when Mr. Haldeman advised the President or discussed the McCord letter with him.

Then 6.2 is Mr. Haldeman's testimony that he discussed this and that the President asked him to call Mr. Colson.

Tab 6.4 is the memorandum of Charles Colson, dictated at 2:15 p.m. on March 23, 1973, just immediately following the call from Mr. Haldeman to Mr. Colson.

If you look at the second page of that memorandum, just above the bracket—this is at 6.4, No. 2—Mr. Colson reported, or wrote, "Bob then asked me what would happen if Hunt 'blew'. I said I thought it would be very bad, that from what I knew, he would say things that would be very damaging. Bob said, 'then we can't let that happen.'"

Mr. WALDIE. Mr. Doar, may I ask a question?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Was Hunt's attorney at this time Bittman?

Mr. DOAR. Yes.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Doar, where did you get this memorandum?

Mr. DOAR. This came from the Senate select committee files.

Mr. MEZVINSKY. Do we have any other memorandums from Mr. Colson?

Mr. DOAR. We do have a number of memorandums from Mr. Colson on this subject and we have included one or two already and we have some on other subjects.

Mr. JENNER. Mr. Chairman?

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Just below the end of your bracket, in that memorandum by Colson, it says that he had a recording of that conversation between himself and Mr. Hunt. Do we have that?

Mr. DOAR. No, we do not have the recording. We have the transcript, but not the recording. I think you will remember, that was the conversation that they had in December 1972.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies and gentlemen of the committee, in response to the question that has been asked by a previous memorandum of Mr. Colson's, it is the memorandum of January 5, 1973, and by oversight, we failed to include it under tab 34.6 in book III, volume 2. We will do so and furnish each one of you a copy of it.

Mr. MEZVINSKY. Thank you.

The CHAIRMAN. Mr. Doar?

Mr. DOAR. Tab No. 7.

Mr. DAVIS. Tab 7; according to Colson's memorandum to the file regarding the telephone conversation between Colson and Haldeman described in the preceding paragraph, Haldeman also questioned Colson about a telephone conversation Colson had had with Magruder. Colson reported to Haldeman that one night in January or February 1972, Hunt and Liddy had come to Colson's office, and Hunt had stated that Liddy had some excellent plans and ideas for intelligence and counterintelligence which he had not been able to have approved at CRP. Colson told Haldeman that without learning of the details of the plan or endorsing the plan, Colson had telephoned Magruder, had asked Magruder to advise Liddy whether he was going to be used in the campaign, and had told Magruder that Hunt was a good man and that his ideas should be considered. Colson told Haldeman that Magruder had assured Colson that the plan would be considered. Haldeman told Colson that Magruder might not remember the conversation the same way, and that Magruder thought Colson had told him to start Liddy's operation. Haldeman also told Colson that the reason for Haldeman's call was to help decide whether all White House aides should volunteer immediately to go before the grand jury, waiving all privilege. Haldeman said he was concerned that the President not appear to be covering up.

Mr. DOAR. This memorandum is at 7.1. It is the last part of the memorandum that was in tab 6, starting on the second page. It indicates that the two subjects that Haldeman called Colson about were his conversations with Hunt and his conversations with Magruder in February of the preceding year.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Should not this memorandum be included at the point in the chronological collection of papers where they were talking about the setting up of the intelligence unit?

Mr. DOAR. Well, I think that it certainly should be cross-referenced to there. We have not, except in several cases, picked a subsequent memorandum to explain conduct that had occurred earlier.

Mr. SEIBERLING. But is this not some evidence of the origin of that original setup?

Mr. DOAR. Yes, it is.

Mr. SEIBERLING. I would hope that we would have some——

Mr. DOAR. We will make a cross reference.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, it is entirely possible it would be more feasible to repeat the memorandum under this tab, but in order to refresh your recollection, you did consider it

under book I, tab 6. The memorandum in connection with this specific matter reads:

While Liddy and Hunt were in my office, I called Jeb Magruder and urged them to resolve whatever it was that Hunt and Liddy wanted to do and to be sure they had an opportunity to listen to their plans.

Mr. SEIBERLING. So this is already in that area.

The CHAIRMAN. Thank you.

Mr. DOAR. Tab 8.

Mr. DAVIS. Tab 8, on the afternoon of March 23, 1973, Dean and his wife went to Camp David, Md. The White House logs indicate that the President spoke by telephone with Dean at Camp David from 3:28 to 3:44 p.m. Dean has testified that after the operator said that the President was calling, Haldeman came on the line and said that while Dean was at Camp David, he should spend some time writing a report on everything he knew about Watergate. Dean has testified that when he asked whether the report was for internal or public use, Haldeman said that would be decided later.

Haldeman has testified that Dean had been told to write a report prior to the time he left for Camp David.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Regarding tab 8, obviously, the testimony Dean is giving here is in direct conflict with the tape we heard yesterday, where they discussed and the President told Dean to go to Camp David and prepare a report and they went into great detail on the report. At least it seems to me we should make reference to that tape of March 22, which is a direct rebuttal of Dean's statement.

Mr. DOAR. I agree with that, Congressman, but we just followed the practice until the committee members heard the tapes of not making any reference to the tapes whatsoever in connection with the other material. That is why it was not done. But we will pick that up now.

Mr. McCLORY. I see. Well, I want to call the members' attention to that.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. Doar, I notice on a few times you refer to this as "White House logs indicate." It seems to me the materials you are referring to are at best abstracts of logs. Is that not correct?

Mr. DOAR. That is correct.

Ms. HOLTZMAN. Does the committee have the logs for these days of the President?

Mr. DOAR. No, these are logs that we requested that the committee subpoena. We do not have these logs.

Ms. HOLTZMAN. I just wonder whether perhaps we ought not to be more careful about the use of the word, "logs," there, because it is unverified.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. On that, it is my understanding that the "logs" we have are reconstructions of logs that have been supplied to us by the White House. Is that true?

Mr. DOAR. No, that is not correct.

Mr. DANIELSON. Where did we get them, then?

Mr. DOAR. These are part of the material that the White House supplied to the Special Prosecutor.

Mr. DANIELSON. Then one step removed, they originated with the White House—

Mr. DOAR. That is right.

Mr. DANIELSON. And came to us by the Special Prosecutor.

Mr. DOAR. It appears that at the White House, someone was assigned the task of going through the President's daily diary and picking out the times that Dean or Haldeman or Ehrlichman met with the President. They then gave the information of the contacts between the President and Dean, for example, off that daily log.

Mr. DANIELSON. But nevertheless, the abstracts that we are utilizing as logs originated in the White House?

Mr. DOAR. That is right. Tab No. 9.

Mr. DAVIS. Tab 9, between March 23 and March 28, 1973, John Dean stayed at Camp David and attempted to prepare a report on matters relating to the break-in at the DNC headquarters and the investigation of the break-in. A draft of portions of a report was prepared by Dean, and partially typed. It related certain events before and after the Watergate break-in.

The draft report made no reference to Dean's meetings with the President or to any statements or actions by the President. Dean has testified that during his stay at Camp David, he decided that he would have to think of some way for the President to get out in front of the matter and that he discussed with Haldeman the creation of an independent Warren-type commission.

On March 28, 1973, Haldeman called Dean and requested that he return to Washington to meet with Mitchell and Magruder.

Mr. DOAR. We have reproduced at tab 9.3 the draft of the so-called Camp David report. It is a 7 or 8 page statement.

Then behind it, you will see notes that John Dean has testified were the first draft of that Camp David report. Tab No. 10.

Mr. DAVIS. Tab 10, on March 26, 1973, the Los Angeles Times reported that James McCord had told investigators for the Senate select committee that both John Dean and Jeb Magruder had prior knowledge of the break-in at the DNC headquarters. On this same morning, H. R. Haldeman, who was with the President in Key Biscayne, Fla., called Dean at Camp David. They discussed Dean's recollection of facts relating to the authorization of the Liddy plan.

Haldeman has testified that he asked Dean if he would have any problems if the President announced that day that he was requesting that Dean go to the grand jury without immunity. Dean replied that he would have no problem with appearing before the grand jury, but that his testimony concerning the number and purpose of the meetings among Dean, John Mitchell, Gordon Liddy, and Magruder would conflict with the testimony previously given by Magruder.

Dean stated there were other areas of concern such as payments to the defendants by Kalmbach of \$350,000; the Hunt threat; and Colson's talk about helping Hunt.

Following his telephone call with Dean, Haldeman met with the President. Haldeman has testified that the President had decided to

drop his plan to announce that Dean would be requesting an appearance immediately before the grand jury. Haldeman has testified that the problem was that Dean had not really sorted out the facts at that point and it was not appropriate for him to go to the grand jury.

Mr. DOAR. Tab 10.4 is Mr. Haldeman's testimony before the Senate select committee in the latter part of July 1973. If you will look on page 2901 of tab 24, Mr. Haldeman says that he called John Dean on the 26th, and the first paragraph inquires whether Dean would be willing to go to the grand jury without immunity. Dean said "No." Then Dean started to relate some of the problems.

In the first paragraph, it is the problem with Magruder regarding the planning meetings, and that there would be a conflict between Dean and Magruder as to how many meetings took place and what was the purpose of the meetings.

Then Dean said the next thing, there are several other areas of concern. He first mentioned the blackmail area.

He talks about the demands by Hunt.

Then the next area deals with the fact that Kalmbach had raised \$70,000, which he gave to LaRue.

Then the next paragraph Dean gets into the question of the \$350,000, and then the next problem was the demands by Hunt in January to Colson and the other was Hunt's demands the preceding week.

Then there was the problem of clemency.

Then there was a problem with respect to McCord writing Caulfield requesting a meeting and the fact that Mitchell told Dean to have him see him and find out what happened.

Another problem area, according to Dean, was his delay in turning over the evidence in Hunt's safe to the FBI. Another was a call Liddy had made to Krogh.

Then Mr. Haldeman testifies that:

Following that phone call, the President dropped his plan to announce that Mr. Dean would be requesting an appearance immediately before the grand jury in order to lay out all the facts as he knew them. The problem was that Dean had not really sorted out the facts at that point and it was not appropriate for him to go to the grand jury.

Tab 11.

Mr. DAVIS. Tab 11.

Mr. WALDIE. May I interrupt a moment, Mr. Chairman?

Mr. DOAR. Is there any conversation subsequent to Haldeman's conversation with Dean where Haldeman reports to the President Dean's reaction to the proposal to go before the grand jury?

Mr. DOAR. Well, I believe at 10.4.

Mr. WALDIE. I mean, is there any—

Mr. DOAR. Subsequent?

Mr. WALDIE. Is there any tape where Haldeman is reporting to the President?

Mr. DOAR. There is no tape at Key Biscayne, and we do not have any—some of the subsequent edited transcripts refer to this matter at various times, but not in this context. We do not have this kind of a complete report.

Mr. WALDIE. I see. Thank you.

Mr. DAVIS. Tab 11, on March 26, 1973, President Nixon, in the presence of H. R. Haldeman, instructed Ronald Ziegler, his press secre-

tary, to express the President's confidence in John Dean. Ziegler announced publicly on that day that the President had "absolute and total" confidence in Dean.

Mr. DOAR. Tab No. 12.

Mr. DAVIS. Tab 12, on March 26, 1973, John Dean telephoned Jeb Magruder and Dean made a recording of the conversation. Dean has testified that he telephoned Magruder and taped this conversation at Haldeman's suggestion. Magruder acknowledged that the Los Angeles Times story stating that Dean had prior knowledge of the break-in was a "bum rap" for Dean. There was also discussion about the number and purpose of meetings among John Mitchell, Gordon Liddy, Magruder, and Dean. Magruder told Dean that Magruder had testified that there had been "one meeting, not two," and that the purpose of the meeting was to go over the general framework of the job of CRP general counsel.

Mr. DOAR. This is another conversation for which we have a transcript as was taped by Dean. It is set forth in 12.2 at page 1258 and 1259 of the SSC record. The tapping was done without Magruder's knowledge. Tab 13.

Mr. DAVIS. Tab 13, on March 26, 1973, the U.S. attorney's office filed in open court a motion for an order compelling Gordon Liddy to testify under a grant of immunity before the grand jury investigating the Watergate break-in. As of March 27, 1973, Judge Sirica granted leave to proceed forthwith with grand jury interrogation of Howard Hunt and others of the convicted Watergate defendants. From March 28, 1973, through April 5, 1973, hearings were held in open court and orders were entered compelling Howard Hunt, Gordon Liddy, and the remaining Watergate defendants to testify before the grand jury under grant of immunity.

Mr. WIGGINS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I do not recall, counsel, who, if anyone, had been granted immunity before any of these proceedings before the Senate select committee or any other proceeding. So much of our testimony is extracts from the Senate select committee, which, of course, was given much later than the events to which they relate, and I would like to know, in weighing that testimony, whether the witnesses were testifying under any grant of immunity. Can you inform me of those facts?

Mr. DOAR. We would make a list and summarize that, the dates of the grant of immunity and with all of the witnesses.

Mr. WIGGINS. Fine. Thank you.

Mr. JENNER. Mr. Chairman, also may I speak?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. And also indicate instances in which, as this one, there is a forced grant of immunity as distinguished from an agreement of immunity.

The CHAIRMAN. That would be good.

Mr. JENNER. Pardon me?

The CHAIRMAN. I say, that would be good.

Mr. DOAR. Tab No. 14.

Mr. DAVIS. Tab 14, on March 27, 1973, Jeb Magruder met with John Mitchell in New York City and discussed the potential of Magruder's

being brought before the grand jury on a perjury count. Magruder has testified that he received from Mitchell assurances respecting continued salary, and that they discussed executive clemency. Mitchell has testified that with respect to support he told Magruder that he was "a very outstanding young man, and I liked and I worked with, to the extent that I could help him in any conceivable way I would be delighted to do so." Mitchell has testified that he did not make any promise of executive clemency. During the conversation, Magruder asked for a meeting with Haldeman.

Mr. DOAR. That completes that book, Mr. Chairman.

Distribute the next book.

The CHAIRMAN. Mr. Doar, are the other books available?

Mr. DOAR. We are getting them out right now.

[Short pause.]

The CHAIRMAN. We will recess for 10 minutes.

[Short recess.]

The CHAIRMAN. The committee will resume.

Mr. DOAR. Mr. Chairman?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Members of the committee, beginning with tab 15 and for the remaining tabs through today's presentation and at our next hearing, reference will be made to the edited White House transcripts that were furnished to the committee in response to the committee's subpoena. I think that before we get into these, this material, I would like to make two observations. I feel I have a responsibility to make two observations to the committee, first we have subpoenaed a number of additional conversations prior to the 21st of March. Going backwards, for example, we requested conversations between the 23d of June 1972, and the 20th of March 1973. We have not received those, and the President has indicated that those transcripts or those tape recordings will not be forthcoming.

I think that the committee should understand what the situation has been with respect to the investigation by your staff. We have not, except for one meeting on the 17th of March, and for one telephone conversation between the President and Dean on the 20th of March, we have not intentionally received one scrap of material relating to events prior to March 21, 1971, from the White House in connection with Watergate, not one bit of material has been produced. We did receive material that had already been furnished to the Special Prosecutor; we did by chance receive about 12 minutes of conversation on the 15th of September. You will recall that conversation was the conversation between Mr. Haldeman and the President in which they discussed their appraisal of John Dean.

Mr. OWENS. What is the date on that?

Mr. DOAR. September 15, 1972. That was furnished to us inadvertently. It was a 12-minute conversation on the 15th of September between 5:15 and 5:27 between Mr. Haldeman and the President, in which they discussed and appraised John Dean.

In our first subpoena we asked for a conversation on or about February 20 between the President and Mr. Haldeman about Magruder, and the response was that the search of the tapes failed to disclose such a conversation. We requested a conversation on February 27 between

the President and Ehrlichman assigning John Dean to work with the President, and the response was that a search of the tapes failed to disclose such a conversation.

We requested a tape of a 55-minute March 17th conversation between the President and John Dean. We were furnished an edited transcript of that conversation, and the edited transcript contained only a brief 3 minute conversation between the President and Dean about the Fielding break-in.

We have indicated to the committee that on the 4th of June, the President listened to a tape of the March 17 conversation and described what he had heard to Mr. Ziegler. And according to the President on that tape was a discussion with respect to Watergate.

So, to summarize with respect to the Watergate aftermath, the only material that the White House has furnished to this committee in the course of this investigation relating to events prior to the 21st of March 1973, relating to the alleged Watergate coverup, is one edited transcript of the telephone conversation between the President and Dean on the evening of March 20 when Dean called the President, or the President called Dean, and Dean said, we have talked about this in bits and pieces up to this time, and I would like to give you a full report in the morning.

I think that the committee—as I say, I feel I have a responsibility to set that forth to the committee, so that the committee first has an opportunity to weigh the edited transcripts that we are now going to present to you.

Now, the second thing is about the edited transcripts themselves.

This committee's tests for considering materials, as I understand it, are relevancy and reliability. Now, I have serious reservations about the reliability of these transcripts. I say that for a number of reasons that will be more apparent as we go along. I am not charging any deliberateness, but I say to you as your counsel, that there are just so many inconsistencies between our transcripts made from the best tape we could get and the White House transcripts furnished earlier that the reliability of this type of material is subject to serious reservation. And it is my belief that each of you must weigh it very carefully.

With respect to accuracy, I have found instances in the White House edited transcripts for which we have tapes where there are six categories of inaccuracies that trouble me. And I have tried to categorize them. We are working on a method of trying to give you this material in a way that would be helpful to you in weighing the reliability of those White House edited transcripts for which we have no tape recordings.

Now, we have compared or are comparing, the transcripts that the White House has furnished us with, with our tapes and our transcripts, and as I say, there are six kinds of discrepancies that bother me.

First, there appears to be, there are instances of misstatements, innocent perhaps, but the fact is, it is a misstatement compared to our tape and our transcript. Then there are omissions. Then there are some additions; then there is some paraphrasing. Then there is misassignment, by misassignment, I mean that words are assigned to one speaker, where, in fact, another person spoke the words, at least that is what we think after listening to our tape recordings, then there are

the unintelligibles. And finally there is selection, a built-in test of relevance.

Now, I have one more thing to say about selection. Throughout these White House edited transcripts there are references with this comment: "Material unrelated to Presidential action deleted." Now, I do not know, I do not know of any precedent for that kind of a judgment with respect to a deletion or an omission of material. I really say to you I do not know what it means. I do not know what that word or those words mean. I do not know what the test is. I do not know whether it is inaction that is covered, is knowledge covered, is lack of knowledge covered.

These things trouble me a great deal, and yet the White House edited transcripts are the only material we have.

So, Mr. Jenner and I have concluded that we would present these to you, try to summarize them as fairly and as accurately as we can, because they are very difficult, particularly the long conversations, are very difficult to follow, much more difficult than our transcripts. We have tried to summarize them as fairly as we can, drawing no conclusions one way or the other, but setting them out for you in summaries, but not including them in the text, using them as we would use the transcript of a tape recording we actually possess ourselves.

But, I feel a responsibility to voice this cautionary concern that I have about the reliability of this material.

Now, we are going to get an instance of that this morning. We are going to get an instance of a situation where there is testimony by Mr. Ehrlichman that he had a conversation with the President at about noon on, I think it is, March 30. That was one of the items that we subpoenaed. And according to Mr. Ehrlichman's testimony before the SSC, the President and he discussed very specific things about his investigation.

But, if you look at the edited transcript that is furnished, you find that the entire conversation relates to a discussion between the President, Mr. Ehrlichman, and Mr. Ziegler about a press release.

Now, that afternoon, the President and Mr. Ehrlichman flew out to California, and I wondered whether or not it was possible that Mr. Ehrlichman was mistaken about when the President gave him these instructions. And I went back and reread Mr. Ehrlichman's testimony before the Senate select committee. He was very specific. He got these instructions at the time that this recorded conversation is supposed to have taken place. He is very specific about that.

Again, it just gives me really serious pause about the reliability of this material. And that, plus the fact which I want to reemphasize again, that the committee should bear in mind that the only scrap of material related to the Watergate issue that the President has furnished this committee of events prior to March 21, 1973 other than the material furnished the Special Prosecutor is an edited transcript on the evening of March 20.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, I do appreciate your bringing all of these materials to the attention of the committee, and I think we ought to give serious consideration to what you have said. But, I am troubled

by one point. So far as I know, all of the participants to these various conversations which are of interest to the committee, are alive and well. Has the committee staff gone out and interrogated these witnesses concerning their recollections of the conversations which you deem to be so important? Have we taken sworn statements from them, or even have we tried to do so, and I want to include in this the President himself?

I understand that we have been made an offer of some sort to examine the President either by written interrogatories or I understand in some sort of a format of a question and answer session. And the tapes, of course, are very valuable, but they are not the sole way to find out facts. And I am curious to know what the committee staff has done to obtain these facts in another way.

MR. DOAR. Well, with respect to some of the people that are involved in these conversations, we have interviewed them. We have not taken sworn statements from them, but we have interviewed them with respect to their recollections. We have also looked at the testimony of the participants at other hearings. We have made an attempt to talk to certain other people that were involved in these conversations and have not been able to talk to them as yet, without compulsion of subpoena. So, we have done some of that, and we are going to do more of it. And I agree, we should do that.

MR. WIGGINS. Please do not neglect it.

MR. DOAR. I agree.

MR. RAILSBACK. Mr. Chairman?

THE CHAIRMAN. Well, might I state that I think this is one of the areas that certainly the committee will have to deal with as we develop this inquiry further. And I think that the staff has proceeded in this way in order to lay before the committee what is now in the public record, and certainly there is substantial sworn testimony that has been received in these areas from the various witnesses. And I think that this is an orderly way to proceed, and where there is this kind of a conflict, this is what has been contemplated, and the committee will have to certainly call in these witnesses to try to resolve this. .

MR. DENNIS. Mr. Chairman?

MR. MARAZITI. Mr. Chairman?

MR. RAILSBACK. Mr. Chairman?

THE CHAIRMAN. I think we better move on.

MR. DENNIS. Well, Mr. Chairman—

THE CHAIRMAN. I am sorry, we are going to move on at this time now because I think counsel has stated his position, and I think that is something for the committee to consider. Now, let us move on with the presentation.

MR. DENNIS. Mr. Chairman, parliamentary inquiry, if you please.

THE CHAIRMAN. Mr. Jenner.

MR. JENNER. Thank you. Thank you, Mr. Chairman. Mr. Doar's statement made to the committee has followed a great deal of agonizing by me and by Mr. Doar. And his statement as he related to the committee is on behalf of both of us.

THE CHAIRMAN. Thank you very much.

MR. MARAZITI. Mr. Chairman?

THE CHAIRMAN. Mr. Doar.

MR. DOAR. Tab No. 15.

Mr. DAVIS. Tab 15, on March 27, 1973, the President met from 11:10 a.m. to 1:30 p.m. with John Ehrlichman and from 11:35 a.m. to 1:35 p.m. with H. R. Haldeman. Ehrlichman has testified that at this meeting the President directed him to contact Attorney General Kleindienst. The President has stated that on March 27, 1973, he directed that Kleindienst be told to report directly to the President anything he found in the Watergate area. The President has produced an edited transcript of this conversation and a summary of that transcript has been prepared.

Mr. DOAR. I would like to ask the committee to refer to 15.5. This conversation in the blue book covers a total of 70 pages. And we have attempted, as fairly and accurately as we could, to distill this into a summary covering 18 pages. And we have tried, as you will see the numbers through it, we have tried to key it to particular pages. We have keyed it to particular pages so that the committee members could refer and get from the summary to the text of the edited transcript.

I do not know whether the committee members will find this useful, or whether they will find that they will prefer to read the entire edited transcript. But, what we are doing is trying to attempt to make it a little easier for the committee members to go through this material.

I would like to illustrate the situation by going over the problem I raised with you about the deletions, by going over with you the first paragraph, which reads as follows:

On March 27, 1972, the President met in his EOB office with Haldeman, Ehrlichman, and Ziegler between 11:10 and 1:30. The meeting opened with a brief discussion of creation of a Watergate Commission. The President then discussed with Ziegler and Ehrlichman possible responses to press inquiries concerning whether John Dean would testify before a grand jury.

In the middle of this discussion, there is a notation, "Material unrelated to Presidential action deleted."

The President instructed Ziegler that should an inquiry be made to "stall them off today by stating that that is not before us at this time," but that "there will be complete cooperation consistent with the responsibility that everybody has on the separation of powers," and consistent with Mr. Dean's responsibility of counsel. The President told Ziegler to refer to Dean as counsel to the White House rather than counsel to the President. The discussion of this topic concludes with the notation, "Material unrelated to Presidential actions deleted."

Tab No. 16.

Mr. DAVIS. Tab 16, on March 28, 1973, Mitchell and Haldeman met with Magruder in Haldeman's office. They discussed Magruder's false testimony regarding the approval of the Liddy plan. Haldeman telephoned Dean and requested that he return from Camp David to meet with Mitchell and Magruder. Dean has testified that on his return he went directly to Haldeman's office; that Haldeman told him that Mitchell and Magruder were waiting in another office to discuss with Dean his knowledge of the January and February 1972 meetings in Mitchell's office; that Dean said that he would lie about those meetings; and that Haldeman said he did not want to get into it, that Dean should work it out with Mitchell and Magruder.

Dean met with Mitchell and Magruder. Following the meeting, both Mitchell and Dean reported to Haldeman that there was a problem as to what the facts were regarding the 1972 meetings.

Mr. DOAR. The problem here is the fact that the grand jury is investigating who had knowledge and who had approved the Liddy plan

and the subsequent break-in. The investigation by the grand jury is focusing on pre-June 17 activity, and the people, you might say, subject to that investigation are Mitchell, Magruder, and Dean. And this conversation, or the meetings which Mr. Haldeman organized, deal with that subject. Tab No. 17.

Mr. DAVIS. Tab 17, on March 28, 1973, John Ehrlichman telephoned Attorney General Kleindienst on the President's instruction and asked Kleindienst a series of questions which the President had dictated and which Ehrlichman had handwritten on a piece of paper. Ehrlichman, during the conversation, told Kleindienst that the President directed him to tell the Attorney General that the best information he had or has is that neither Dean, Haldeman, Colson, nor Ehrlichman nor anybody in the White House had any prior knowledge of the Watergate burglary; that the President was counting on the Attorney General to provide him with any information to the contrary, and to contact him direct. Ehrlichman also told the Attorney General that serious questions are being raised with regard to John Mitchell, and the President wanted the Attorney General to communicate to him any evidence or inferences on that subject.

Mr. DOAR. Tab 17.2 at page 2749 is the testimony of Mr. Ehrlichman about the fact that the President:

Had said to me to say that the best information he has had or has is that neither Dean, nor Haldeman, nor Colson, nor Ehrlichman, nor anybody in the Committee has had any prior knowledge of this burglary.

Members of the committee. I just noticed a difference in tab 17 between the tab and the testimony, and I want to call it immediately to your attention. The testimony is, "neither Dean, nor Haldeman, nor Colson, nor I, nor anybody in the committee;" whereas the tab says, "nor anybody in the White House." I think that should be corrected immediately. On the tab it is the seventh line. Does every member of the committee see that?

The CHAIRMAN. What should that be, Mr. Doar?

Mr. DOAR. Well now, Mr. Davis calls my attention to the fact that in the transcript of the recorded conversation, which is, if you look at 2944 and 17.4, which is the recorded conversation, it appears that it is not an error, that Mr. Ehrlichman misspoke in his testimony at 2749, because at the bottom of page 2944, the answer says:

We will keep track of that, and you will be talking to Baker and get a feel of it. The President said for me to say to you that the best information he had or has is that neither Dean, nor Haldeman, nor Colson, nor I, nor anybody in the White House had any prior knowledge of this burglary.

Mr. SEIBERLING. Mr. Chairman, on 2947 is Mr. Ehrlichman purporting to read from the transcript? It looks as though he is, possibly.

Mr. DOAR. He is reading from the transcript.

Mr. SEIBERLING. This may have been a stenographic error, with apologies to our stenographer here.

Mr. DOAR. Well, we will just have to check this for you and resolve this.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, again with respect to the discrepancy between the transcript and the testimony of Mr. Ehrlichman, it may be desirable to see if we can get the actual tape of that conversation, because that might clarify exactly what was said.

Mr. DOAR. Well, we have that, and I think we did make—we did make—if you look at tab 17.5 at page 5, if you will look at page 1 of 17.5, this is a transcript prepared by the impeachment inquiry staff of the House Judiciary Committee of a recording of a telephone conversation of Mr. Richard Kleindienst and John Ehrlichman on March 28. And if you turn to page 5, Mr. Ehrlichman says, “Neither Dean, nor Haldeman, nor Colson, nor I, nor anybody in the White House.”

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Has the staff ever interviewed Mr. Ehrlichman on this point?

Mr. DOAR. No, we have not.

Mr. DENNIS. Have you interviewed him at all?

Mr. DOAR. No, we have not.

Mr. DENNIS. Have you ever interviewed Mr. Dean?

Mr. DOAR. No, we have not.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I wanted to call counsel's attention both to our summary on 17.5 and to tab 17.4 to the sentence which follows this disputed language of White House or committee.

Mr. DOAR. I think—I do not think it is disputed any more when I look at this transcript.

Mr. WIGGINS. Well, especially in view of the language which immediately follows where he says, “Now, as far as the Committee to Reelect is concerned,” differentiating between the White House, and when we go back to our tab and accept as a possible fact that we are talking about the White House.

Mr. DOAR. I think we should. When I read it, Congressman, it just struck me because I had missed it before, and I was just afraid when I read that, that I had made a mistake, or the staff had made a mistake. And we have not. The tab is correct. We should leave it as it is.

Mr. WIGGINS. All right.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, I am not sure why the committee prepared a new transcript of that conversation. Are there differences between that and the one shown in 17.4?

Mr. DOAR. There are no material differences. We got the transcript, or the dictabelt, and we prepared the transcript just so the committee could compare it.

Mr. OWENS. And there is basically no difference between 17.4 and 17.5 then?

Mr. DOAR. There is not, but there has been a question by the committee members about whether or not those transcripts were accurate, and the ones that we secured the dictabelts for we made transcripts to just check that.

Mr. OWENS. All right. Fine.

Mr. DOAR. Tab No. 18.

Mr. DAVIS. Tab 18, on August 22, 1973, the President publicly stated that on the 29th of March he directed Ehrlichman to continue the investigation that Dean was unable to conclude.

Mr. DOAR. Tab No. 19.

Mr. DAVIS. Tab 19, on March 29, 1973, a report of James McCord's testimony at an executive session in the Senate select committee on March 28, 1973, appeared in the National Press. The reports said, among other things, that McCord testified that he had been told that John Mitchell, Charles Colson, John Dean, and Jeb Magruder had prior knowledge of the Watergate bugging operation.

Mr. DOAR. Tab No. 20.

Mr. DAVIS. Tab 20.

Mr. WALDIE. Can I interrupt here, Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, I suppose that it will be clarified, I suppose it will be clarified as we go along, but why do you give such credence to such obvious hearsay as a newspaper article on tab 19?

Mr. DOAR. Well, the purpose, the purpose of the tab is not to the substance, but just to the public notice of that fact.

Mr. WALDIE. Well—

Mr. DOAR. The pertinence is, it seemed to us, was the fact that there was public notice of this.

Mr. WALDIE. Public notice of what?

Mr. DOAR. Of what Mr. McCord's—Mr. McCord's alleged testimony.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I would just like to pursue Mr. Waldie's question. Do we have McCord's testimony?

Mr. DOAR. Yes.

Mr. RAILSBACK. Actual testimony? I kind of wonder why—do you think it is important because this was leaked to the Post?

Mr. DOAR. Well, it is not that it was leaked to the Post, but the fact that it was publicized. I think the activity of the investigative body and the public notice of their activities during this period is pertinent to the inquiry, and to the response and the actions or inactions by the President, with such knowledge as the committee might conclude the President and his key associates had with respect to what might be going on in an executive session or grand jury testimony during this period.

Mr. RAILSBACK. I see. Is the leak accurate?

Mr. DOAR. Pardon?

Mr. RAILSBACK. Is the leak accurate?

Mr. DOAR. I cannot tell you because I do not know that. I will find that out for you.

Mr. RAILSBACK. I think it has been helpful to us that you explained that, because otherwise, people might take this as part of your statement of information, you know, that these are facts to be given weight.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I would like to suggest along the same line that since we do have the executive session testimony, why don't we have it excerpted into our information?

Mr. DOAR. We will do that.

Mr. SEIBERLING. But the point is, as I understand it, is that this is put in not as proof of the correctness of the report in the national press, but the fact that there was such a report?

Mr. DOAR. That is correct.

Mr. JENNER. Not the truth of what is stated in there.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Well, it seems to me that it would be much less misleading to the committee if not only is the grand jury testimony set out, but if there is, in fact, an inconsistency in that and the press report, that the tab should so state, so that we would know whether or not this was an accurate report, if that information is available.

The CHAIRMAN. Will counsel please address themselves to that?

Mr. DOAR. We will take care of that. Tab No. 20.

Mr. DAVIS. Tab 20, on August 15, 1973, the President stated that when he learned on March 30 that Dean had been unable to complete his report, he instructed Ehrlichman to conduct an independent inquiry and to bring all of the facts to him. On March 30, 1973, the President met with John Ehrlichman and Ronald Ziegler from 12:02 to 12:18 p.m. According to the White House edited transcript of this meeting, the only subject discussed was a draft statement to be issued by Ziegler at a press briefing. Ehrlichman has testified that at the noon meeting, the President directed him to conduct an inquiry into the Watergate matter. Ehrlichman has testified that the President said he was satisfied John Dean was in this so deeply that he simply could not any longer have anything to do with it; that the President needed to know about the executive privilege and the attorney-client privilege; that the President needed some strategy with regard to testifying at the committee and the grand jury and other places; and that the President needed the truth about the Watergate matter.

Mr. DOAR. Members of the committee, if you would refer to 20.5, it is John Ehrlichman's testimony, and at page 2747, Mr. Ehrlichman says at the middle of the page:

Well, that was a meeting in the President's office on March 30, and it was, as I recall, quite brief. We had—we were getting ready to leave the same day, as a matter of fact, for California, and he called me down. I am looking for the time to help me, to recall the time of departure here. Yes, we leave at 3 o'clock in the afternoon. We had had a long meeting that morning with Secretary Shultz and Mr. Sonnenfeldt about the economy, and that ran from 9 to about, I don't know, what, 10 a.m. or 11 a.m., something of the kind, a long session, as I recall. He called me down for just about 10 minutes at noontime, and said what I have just told you, and I said, "Well, what is it you expect me to do basically?" and he said, "I want you to step in to what Dean has been doing here. I need to know about executive privilege, I need to know about the attorney-client privilege, I need to have somebody get this strategy with regard to testifying at the committee and the grand jury and these other places, and I need to know where the truth lies in these things." And the only tipoff that I had had to that was a request from him on the 27th, I believe it was, yes, on the 27th.

Now, 20.4 is the White House edited transcript from pages 388 to 400. And before we look at 28.4, if you look at Mr. Ehrlichman's log, if you look at Mr. Ehrlichman's log at 20.3, there is an insertion on the fourth line there, "12:00, President, March 30".

And if you look at the material the White House furnished to us, which is 12.2, there is an indication that the President met with Mr. Ehrlichman and Mr. Ziegler from 12:02 to 12:18.

Now, the edited transcript of that meeting is at 20.4, and we have reproduced it. But, the single subject that is included in this edited transcript is a press release that the President and Mr. Ehrlichman and Mr. Ziegler discussed during that meeting.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Doar, this is a brief meeting which apparently runs for 16 minutes, and the edited transcript does not include references to the testimony of Ehrlichman concerning the substance of that conversation. Now, either the transcript is incomplete or Ehrlichman's memory is faulty, one or the other. The edited transcript runs some 12 pages, or 16 pages, perhaps. Twelve pages.

Mr. DOAR. Twelve pages.

Mr. WIGGINS. Has anybody put a stopwatch on this to see how long it would take to go through what has been given as against the 16 minutes?

Mr. DOAR. I do not think you can do that, Congressman, with just a transcript. I thought about that. I mean, for example, on the March 22 tape or transcript it ran for 95 pages, and it was for 1 hour and 40 minutes. On the March 21 it was also for about 1 hour and 40 minutes, and it ran for 124 pages, I think, which is that with the unintelligibles and the pauses, it makes it, even with the tapes, a variance in the number of pages you will get.

Mr. WIGGINS. It would seem clear, I would think, that there cannot be much room left within that 16 minutes to discuss an awful lot. I think that is one fair inference.

Mr. DOAR. I think that is clear. I do not want to make too much out of this, but I—

Mr. WIGGINS. I realize that.

Mr. DOAR. But I think I should point out to the committee that is the thing about these White House edited transcripts that gives me trouble.

Mr. WIGGINS. Certainly, and they give me trouble, too. Of course, Mr. Ehrlichman met several times later during the day with the President, and it could be a confusion as to when the conversation occurred.

Mr. DOAR. I think so.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. This is the one, of course, that you called our attention to previously, right?

Mr. DOAR. That is right.

Mr. DENNIS. And I see the problem also. I share the problem with you. I take it, due to your answer to me a while ago, that you had not talked to Mr. Ehrlichman, that you never tried to take this particular discrepancy up with him to see what he has to say about it?

Mr. DOAR. No, because I will be honest with you, it was just in the last few days that I appreciated it.

Mr. SARBANES. Mr. Chairman?

Mr. DENNIS. But you have never interviewed him at all as I understand it, is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. Thank you.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I had a question that went a little down this line, and I just want to make sure I have the facts that you gave. You say there were two conversations, each going about 1 hour and 40 minutes,

or about 100 minutes, and that the transcript for one ran 95 pages and the transcript for another one ran 124 pages. Is that correct?

Mr. DOAR. Well, that is my recollection. That is my recollection.

Mr. SARBANES. Which points out, I guess, the difficulty of establishing a direct transcript-page relationship to a time period for a conversation, although I thought that this conversation would have been short of either one of those two, I think, if I calculate it out right. But, has much analysis of that sort been done with respect to other things?

Mr. DOAR. We have not done any analysis. There was, I noticed several weeks ago, and we are looking at all of these, a comment in the paper with respect to one of the later transcripts where there is a reference to time, and one of the participants speaks about a particular time, and then they keep talking, and then somebody refers to the time again. And there is no editing during that period, and yet it seems improbable that all of that conversation, or so little conversation took place. And then there was another, that the committee may well remember where the conversation between the President and Mr. Petersen was recorded by two different people differently.

The CHAIRMAN. Well, I think first of all that we should not make too much of this. I think that while it may be a fact to consider, one has to realize that individuals sometimes talk at different paces, and when they have a steady flow of words, when they have a thought in mind, you can get a lot more words into a page, and that takes a lot more pages. And so I think that we just ought to just bear this in mind. But, I do not think we ought to make much of this.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Doar, with respect to your comment about the things that trouble you, and legitimately so, about the six points, will you be recommending that the chairman or the ranking minority member go to the White House and take advantage of the President's offer to verify these things?

The CHAIRMAN. I am afraid, I am afraid that even before considering the recommendation of counsel that the Chair would hesitate to even consider that offer unless the committee were so disposed to act in that regard. I think that this would be imposing a responsibility on both the chairman and the ranking member that certainly would not discharge the job that we have.

Mr. McCLORY. Mr. Chairman, I want to concur with what the chairman said. But, I would like to just add this too, that it does demonstrate, and I say this because the President's counsel is here, it does demonstrate the need for some mechanism to be worked out whereby the committee can have the opportunity to verify the completeness and the accuracy of the transcripts, of the edited transcripts furnished by the White House.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I think in addition to the reservations that Mr. Doar has stated about the reliability of these Presidentially edited transcripts, there is also the experience that we have had as to the reliability of our own transcripts, which we have been led to believe are prepared

with much more sensitive equipment being used, yet repeatedly, members of the committee have heard things in the tapes that were played to us which were marked "unintelligible" on our own transcript. We have had great differences as to what some of those words were. Our own transcripts are not as reliable as I had certainly assumed they were. I understand that work is continuing on them to try to make them more accurate. But certainly, there is a great difficulty in verifying this type of thing.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Doar, let us proceed. I think we can reserve these comments for sometime.

Mr. DOAR. Tab 21.

Mr. DAVIS. Tab 21, on March 30, 1973, at 12:30 p.m., Ehrlichman met with Fielding Dean's assistant. Ehrlichman has testified that he had directed Fielding to deliver Dean's personnel records to Ehrlichman and to brief Ehrlichman about allegations that Dean had been dismissed by a law firm because of unethical conduct. At 3 p.m. on March 30, 1973, Ehrlichman and the President flew to San Clemente, where Haldeman joined them on April 1, 1973. They remained in San Clemente until April 8, 1973. While they were at San Clemente, Ehrlichman had a long distance phone conversation with Dean in which they discussed the allegations that Dean had been involved in unethical conduct.

Mr. DOAR. Tab 22.

Mr. DAVIS. Tab 22, on March 30, 1973, Ronald Ziegler stated in a press briefing that no one in the White House had any involvement in the Watergate matter. Ziegler also announced that the President reiterates his instructions that any member of the White House staff would appear before the grand jury if called to answer questions regarding that individual's alleged knowledge or possible involvement in the Watergate matter.

Mr. DOAR. Tab 23.

Mr. DAVIS. Tab 23, on March 30, 1973, John Dean retained Charles Shaffer, a criminal lawyer, and met with Shaffer and another attorney, Thomas Hogan, to discuss the break-in at the DNC headquarters and the events that followed. Haldeman has testified that Dean had indicated earlier that he might retain a private attorney so that Dean, and, through him, the President, could consult an attorney familiar with criminal law on the implications of some of Dean's concerns. On the afternoon of April 2, 1973, Dean's lawyers began a series of meetings with the Watergate prosecutors.

Mr. DOAR. 23.2, at Page 2903 is Mr. Haldeman's testimony to the effect that it was his understanding that Dean hired a lawyer about March 30. He had indicated earlier that he might do so, and through him the President could consult an attorney familiar with criminal law on the implications of some of the concerns Dean was having. Tab 24.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Could I refer you back to tab 22 and the statement that Ziegler announced that the President reiterated his instructions that any member of the White House staff would appear before

the grand jury to answer questions of—is not that a new development? Had that happened previously?

Mr. DOAR. That is the first time that occurs, the first date that it was made.

Mr. OWENS. But it said reiterates in there. It is the first time the President had said that any of the White House staff could appear, even to just answer in that limited area.

Mr. DOAR. I do not know what the occasion was. I will have to check that, Congressman.

Mr. OWENS. Thank you.

Mr. DOAR. Tab 24.

Mr. DAVIS. Tab 24, on March 30, 1973, newspaper reports stated that Robert Reisner, former administrative assistant to Jeb Magruder at CRP, was to be subpoenaed by the staff of the SSC. Magruder has testified that he realized that his story about his 1972 meetings with Mitchell, Dean, and Liddy would not hold up when it became clear to him that, among other things, the SSC had begun an investigation and Reisner, who knew about the meetings and who had previously been missed by the prosecutors, would be gotten to. On March 31, 1973, Magruder, who previously had been represented by the attorneys for CRP, retained James Bierbower as his personal attorney.

Mr. DOAR. Tab 25.

Mr. DAVIS. Tab 25, on April 2, Ronald Ziegler issued a public statement criticizing the Senate select committee as being plagued by irresponsible leaks of tidal wave proportions. Ziegler stated that the White House intends to cooperate with the committee but called on Senator Ervin to get his own disorganized house in order so that the investigation can go forward in a proper atmosphere of traditional fairness and due process.

Mr. DOAR. Tab 26.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I know that I am missing something, but what is the significance of 25.

Mr. DOAR. The significance of 25 is the fact that it shows what action the White House took on April 2 with respect to this matter, one bit of action that the White House took.

Mr. DAVIS. Tab 26, on April 4, 1973, Dean told Haldeman that his lawyers had met privately with the prosecutors.

Mr. DOAR. Tab 27.

Mr. DAVIS. Tab 27, on April 5, 1973, L. Patrick Gray called the President and requested that his nomination as permanent Director of the FBI be withdrawn. According to Gray, the President told him that this was a bitter thing to have happened to Gray and there will be a place for Gray in the Nixon administration. The President informed Gray that he wanted him to serve as Acting FBI Director until a successor was confirmed.

In a public statement issued by the President on April 5, 1973, announcing the withdrawal of Gray's name, the President praised Gray and stated that his compliance with Dean's completely proper and necessary request for FBI reports exposed Gray to totally unfair innuendo and suspicion.

Mr. DOAR. At another part of our presentation, the committee's attention will be called to certain other information with respect to Presidential conduct on April 6 with respect to a consideration of a new Director for the FBI. That will come at another part of the presentation. Tab 28.

Mr. DAVIS. Tab 28, on April 5, 1973, John Ehrlichman met in San Clemente, Calif., with Paul O'Brien. According to Ehrlichman, O'Brien had asked to meet with H. R. Haldeman to transmit some information to the President. According to Ehrlichman's testimony and notes, O'Brien told him that he had obtained information from Jeb Magruder and others concerning, among other things, Magruder's and Mitchell's involvement in meetings in which the Liddy plan for electronic surveillance with a budget of \$100,000 to \$250,000 was outlined; Magruder's testimony concerning the number of meetings among John Mitchell, Gordon Liddy, John Dean, and Magruder; Magruder's claim that Charles Colson called him urging that the program go forward; Magruder's claim that Gordon Strachan came to him and said the President wants this project to go on; payments that had been made to the defendants and their attorneys; and possible offers or commitments regarding executive clemency to Liddy, Howard Hunt, and James McCord.

O'Brien told Ehrlichman that neither Magruder nor Mitchell were inevitably hung and that Dean was the key problem. Ehrlichman's notes also state "must close ranks," "JNM will tough it out," "H must bring Jeb up short" and, written below "Jeb," "shut up" and "stop seeing people." After this meeting, Ehrlichman met with the President. Ehrlichman has testified that he reported to the President after he had talked to O'Brien.

Mr. DOAR. Tab 28.3 are Mr. Ehrlichman's notes that he took contemporaneous with the meeting. If you look at page 2924 of that tab, you will see at the bottom of the page where the line is drawn across, where it says "Magruder not inevitably hung, not JNM." Then "Dean the key problem concerned about post—with slanting money."

Then if you turn to 2930, at the bottom, Mr. Ehrlichman's note "must close ranks; JNM will tough it out."

Then below that, "Martha."

Then below that "H must bring Jeb up short." Below that, "shut up". Below that "stop seeing people."

Mr. FLOWERS. Mr. Chairman on the beginning of page 2915 of that tab, 28.3, I note the date April 13, 1973 at the top of the page of Mr. Ehrlichman's notes. We are talking about April 5. What is the variance there? Does that indicate that this was put down on April 13?

Mr. DOAR. Mr. Ehrlichman submitted a number of pages of material. The interview with Mr. O'Brien begins on the next page. On 2922, you see on the next page, "Paul O'Brien" and below that, "April 5, 1973."

Mr. FLOWERS. Thank you.

Mr. DOAR. Tab 29.

Mr. DAVIS. Tab 29, on April 6, 1973, Ehrlichman with Kalmbach in the Bank of America parking lot in San Clemente, Calif. Ehrlichman's notes dictated after the meeting reflect a discussion of Kalmbach's activities in raising and disbursing money for the Watergate

defendants. Kalmbach told Ehrlichman that he had retained the services of an attorney, Paul O'Connor.

Mr. DOAR. Tab No. 30.

Mr. DAVIS. Tab 30, on April 8, 1973, Dean started to meet with the prosecutors. While meeting with the prosecutors, Dean received a call from Air Force I from Haldeman's assistant, Lawrence Higby, who asked Dean to be in Ehrlichman's office that afternoon for a meeting. Ehrlichman and Haldeman met with Dean from 5 o'clock until 7 p.m. There was a discussion of the possibility of a grand jury appearance by Dean. Ehrlichman has testified that they discussed, among other things, what this "hang up" was between Mitchell and Dean and Dean's feeling that Mitchell did not want Dean to talk to the prosecutors or appear before the grand jury.

Ehrlichman has also testified that the President decided on the flight that he wanted Dean to go to the grand jury, and that Ehrlichman and Haldeman conveyed that to Dean at the meeting.

Mr. DOAR. Tab 31.

Mr. DAVIS. Tab 31, on April 8, 1973, from 7:33 to 7:37 p.m., the President and John Ehrlichman spoke by telephone. The President has produced an edited transcript of that conversation. A summary has been prepared of that transcript.

Mr. DOAR. Tab 32.

Mr. DAVIS. Tab 32, on April 11, 1973, Attorney General Kleindienst had a conversation with Assistant Attorney General Petersen. Kleindienst told Petersen that Ehrlichman had just called to tell Kleindienst that he did not feel that any White House aides should be granted immunity.

Mr. DOAR. Tab 33.

Mr. JENNER. Excuse me, John. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Would the committee please return to tab 31, under tab 31.2? The statement is that Mitchell has got to decide whether he is going to tell John Dean to say nothing or to lie. That is not a paraphrase, it is a quote. I thought I would call to your attention that the next sentence, utterance by the President, was, "Well, John is not going to lie."

Mr. SEIBERLING. Mr. Chairman, I do not find the wording that Mr. Jenner just purported to read.

Mr. JENNER. It is in the transcript itself.

Mr. SEIBERLING. Should that not be in the summary?

Mr. JENNER. The transcript page 2 reads: "Mitchell has got to decide whether he is going to tell John Dean, 'Look here, I do not think you ought to say a word or you have got to go down and lie.'"

Then, "Well, John is not going to lie."

Mr. DOAR. That should be in the transcript.

Mr. SEIBERLING. Are we going to get an edited—

Mr. DOAR. Yes; we will correct that.

Mr. McCLODY. That is John Mitchell?

Mr. JENNER. John Mitchell.

Mr. DOAR. Tab 33.

Mr. DAVIS. Tab 33, on or about April 12, 1973, Ehrlichman met with Haldeman's assistant, Gordon Strachan. Ehrlichman has testified that

Strachan said that he had just returned from the grand jury and that upon leaving the grand jury room, he had realized that the testimony he had given was mistaken with respect to the amount of money he had delivered to Fred LaRue. Ehrlichman has testified that he advised Strachan to get an attorney and, subject to the attorney's advice, to tell the prosecutor that he had made a mistake in his testimony.

Mr. JENNER. Mr. Chairman, before Mr. Doar speaks on this paragraph, Congressman McClory asked whether that was John Mitchell. It is not.

You will notice, if I may read the sentence again——

Mr. SMITH. Where is this, Mr. Jenner?

Mr. JENNER. This is back on page 2 of the blue book transcript. I will read the sentence "Mitchell has got to decide"—this is tab 31.2, the summary. The question is: Is the John mentioned John Mitchell or John Dean? I read the material to you: "Mitchell has got to decide whether he is going to tell John Dean, 'Look here, I don't think you ought to say a word or you have got to go down and lie.' Well, John is not going to lie." That refers to John Dean, not John Mitchell.

The CHAIRMAN. Mr. Jenner, would you tell us what page of that April 8 transcript it is on?

Mr. JENNER. Page 402 of the blue book.

The CHAIRMAN. Which we already have copies of.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I wonder why we just have a summary. It seems to me this is rather significant.

The CHAIRMAN. Well, you have the whole edited transcript.

Mr. RAILSBACK. Well, I know, but in other places, you have given us the transcript itself. It seems to me that is fairly significant. Maybe it would be better to have the transcript itself.

Mr. DOAR. We will do that. We will include the transcript references in this.

The CHAIRMAN. That concludes this presentation?

Mr. DOAR. That concludes this presentation.

The CHAIRMAN. As I understand it, Mr. Doar, you have yet to present us with some other transcripts, one other tape—or two other tapes?

Mr. DOAR. Two tapes.

The CHAIRMAN. Which will take up how much time?

Mr. DOAR. The tapes will take 1 hour and 10 minutes.

The CHAIRMAN. Both tapes?

Mr. DOAR. Both tapes.

The CHAIRMAN. And the paragraphs?

Mr. DOAR. Probably—well, 2½ hours, probably.

The CHAIRMAN. Well, would you kindly relate to the committee just what you are confronted with insofar as the presentation and preparation of these particular paragraphs and these particular tapes?

Mr. DOAR. With respect to that, it is the summary, preparing fair and accurate summaries of this blue book of about 700 pages of White House edited transcripts, the book, to check those over as carefully as we can, that they will all be included in this next presentation. That is what we are working on now.

The CHAIRMAN. And that will not be ready for sometime?

Mr. DOAR. No, that will be ready next week, whenever the committee meets again. And that will finish the presentation up to April 30. It is not ready today.

The CHAIRMAN. And it will not be ready——

Mr. DOAR. Before the weekend.

The CHAIRMAN. Under those circumstances, then, the Chair is going to recess and give the staff an opportunity to make a proper presentation of this material and we will not meet until Wednesday of next week.

On Wednesday of next week, it is the intention of the Chair to take up this presentation to conclude this portion of the presentation, which is the Watergate, and up through April 30, is that correct?

Mr. DOAR. That is correct.

The CHAIRMAN. And following that, in order that we dispose of some of the problems that we have, the Chair intends to schedule meetings instead after Wednesday, after we finish that, and hopefully, we will finish that in one day, and then go on to business meetings on Thursday and Friday, if necessary, to dispose of the problems that I think we have got to deal with before we go on to the ITT and to the dairy industry matter.

The Chair had hoped that we might have gotten to ITT and dairy industry before then, but unfortunately, I think that in order that we have a very, very good presentation, and I think that it is important that we do, and this portion Mr. Dear and Mr. Jenner is going to provide us with, I understand, is going to be difficult to put together before next Tuesday or Wednesday.

Now, at that time, it is the intention of the Chair to deal with a number of questions, one relating to the President's response to our subpoena; two, the question as to what disposition we will make of the material that has been presented, since this was developed in executive session in these closed hearings; and the question that the committee will have to discuss and confront and resolve will be just what to do with this material, whether to make it public or not to make it public.

There are going to be other matters that I know the committee members have called to my attention—the Chair intends to take up the requests that have been raised by Mr. Dennis and Mr. Froehlich and Mr. Railsback at that time. Hopefully, we can dispose of these during the course of those two meetings on Thursday and Friday. I think it will take all of that time.

Mr. McCLODY. Mr. Chairman, may I ask several questions? One, it is my understanding that when we recess this morning, we will recess until next Wednesday as far as the presentation is concerned?

The CHAIRMAN. That is correct, at 9 o'clock next Wednesday.

Mr. McCLODY. I want to ask this further: In addition to this number of items that will be on the agenda for next Thursday at our meetings, I assume our hearings on Wednesday will be in another closed session, when we will listen to tapes and so on.

The CHAIRMAN. That is correct.

Mr. McCLODY. The meeting on Thursday will be an open meeting. Is that going to be an open meeting—are you going to recommend that we permit television coverage of our meeting at that time in accordance with the rules of the House?

The CHAIRMAN. That is against the rules of the House. That would be a violation of the rules of the House. We would conduct open meetings, but television will not be permitted.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I would like to express my very sincere appreciation of the fact that you are going to take up the matters that I suggested and Mr. Froehlich, and Mr. Railsback. I think that is a very good move. If I might respectfully throw out another item for our possible consideration, I hope that the chairman will not reject out of hand but will seriously consider the matter of these interrogatories to the President. I think we should explore that also.

The CHAIRMAN. The Chair certainly intends to take that up.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

In view of the statement made by Mr. Doar and supported by Mr. Jenner this morning and the questions raised by Mr. Wiggins about interviewing witnesses, it seems to me we have reached a point where it is clear that the committee can identify conversations and participants where we do not have the tape. I would hope that between now and next Thursday, the staff could work up a presentation to substantiate the calling of certain key witnesses that we can take under consideration at that time.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I wonder if we could kind of formalize what Mr. Doar agreed to do and Mr. Jenner earlier, when I had a chance to visit with them.

I think it would be very helpful to the members of the committee if, as soon as we can get the job done, if we explored here maybe some kind of a listing of all of the various alternatives as far as enforcement of subpoenas, in other words, maybe going into a little more detail than that original memorandum, including even the possibility of legislating the power that we gave to the Ervin committee to enforce its subpoena. I wonder if we can explore the various alternatives so that we can be prepared next Thursday?

The CHAIRMAN. Counsel have been instructed to proceed with that.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I want to express my concern that we have had the presentation and I know we are methodically trying to present the case and Mr. Doar and Mr. Jenner have done that. I see that there are serious points that are raised by Mr. Doar concerning six areas of concern in connection with the White House edited transcripts. We have the ITT and dairy in front of us; we see we have business meetings next week. We see that we are going to have more of the presentation go on longer. I am really concerned as to the time frame that we are working under, since we are supposed to, hopefully, reach a decision by the end of June or the first week in July.

I am also concerned that we are working, I know, under 3-day week sessions and that the staff has to do its job and we have to absorb the

material. But I think we really should confront the fact, and very soon, that either we are going to have to meet more often, meet more than 3 days or meet in the evenings, or possibly meet on the weekends, to face this issue, or we are going to be in here and we will not have a decision until the end of August.

Then I am concerned that we have Mr. St. Clair here, we have the question of witnesses and who we are going to call, and we have members raising that point. With all of that discussion, I am sincerely disturbed by the fact that we may find ourselves not resolving this issue until the latter part of this summer.

The CHAIRMAN. Well, the Chair shares the gentleman's concern and the Chair would want to advise the gentleman that staff is moving as expeditiously as it can consonant with being careful and deliberate in the presentation. I would hope that perhaps the members might take this into account, that maybe, perhaps, we might not have the unnecessary questions that sometimes develop and maybe we can proceed even a little more speedily.

With that, we will recess until 9 o'clock Wednesday next.

[Whereupon, at 12:15 p.m., the committee recessed to reconvene at 9 a.m., Wednesday, May 29, 1974.]

IMPEACHMENT INQUIRY

Executive Session

WEDNESDAY, MAY 29, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Robert L. Brown, counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; John R. Labovitz, counsel.

Committee staff present: Jerome M. Zeifman, general counsel, Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order. And before Mr. Doar continues with his presentation, I would like to recognize Mr. McClory to make a statement.

Mr. McCLORY. Mr. Chairman and members, as you know, the last couple of meetings, our colleague, Congressman Ed Hutchinson, has been missing. He was taken to the hospital last Thursday. He is in Bethesda Naval Hospital.

Now, his condition is not serious. He had a minor operation from which he is making a normal recovery. He is remaining a little longer for the purpose of resting, but not because of the seriousness, as it is reported to me. And I talked with him on the phone Friday at the hospital, and he seemed to be comfortable and in good humor at that time. He and his wife have requested that he not receive any visitors or any telephone calls, and I suppose, nevertheless, that if you wanted to communicate with him with a note or something like that, that it would be entirely appropriate.

If you do want to communicate with him in any respects, it is requested that you communicate through his administrative assistant, Mrs. A. J. Shultz, in his office, and he is expected to be back very soon.

Thank you.

The CHAIRMAN. Thank you very much.

Before recognizing Mr. Doar, might I just advise the committee that today's presentation, I think, is important. It is going to be intensive. In the light of the fact that the House does meet at 12 o'clock, and we do have a program for this afternoon which I think will require our attendance on the floor, hopefully we will get through with this phase of the presentation today, and that there, indeed, need not be any continuing hearing tonight. I would suggest that the members try as much as they possibly can to refrain from asking any questions which can be asked possibly during the recess, which won't take up the time during this presentation.

We do have a lot, about 1 hour and 10 minutes of tapes to listen to as well, and that is going to take a considerable portion of the morning. And hopefully, we can get through with this phase sometime late this afternoon, and there need not be an evening meeting.

But, in the event we do not conclude by late this afternoon, we are going to have to hold a night session. Thank you very much.

Mr. LATTA. Mr. Chairman, one question. Do you contemplate being in on Friday?

The CHAIRMAN. We have an agenda for tomorrow, and if we do not conclude with that meeting's agenda by tomorrow, we will meet Friday as well. The agenda presently is on your desk, as I am informed. Mr. Doar.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman.

Ladies and gentlemen of the committee, the period you are about to consider from the 12th of April to the 17th or 18th and around into the 20th is a series of events and conversations which must be considered as a whole, and especially we get into some hectic days and a lot of conversations, different things going on at different times. And as juries are normally cautioned by the judge after he has selected the jury, you have to wait until you have the whole package.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, to give the committee members some idea of the schedule today, the principal material that we will be presenting to you, without comment or discussion, are the edited transcripts of recorded conversations between the President and his key aides and the President and Mr. Petersen and Attorney General Kleindienst on the 14th, 15th, 16th, and 17th of April.

Just to give you an idea of the length of time involved in these conversations, on the 14th of April the President, Mr. Ehrlichman and Mr. Haldeman conferred for about a total of 6 hours and 40 minutes. And on the 15th of April they conferred for a total of about 1 hour.

Now, the tape ran out at 2 o'clock so that I mean the recorded conversations were about 1 hour, on the 16th for 1 hour and 40 minutes, and on the 17th, including a conference that Secretary of State, Mr. Rogers, also participated in, was about 4½ hours.

In addition, on the 15th, the President had some conversation with Attorney General Kleindienst which was a little over 1 hour, and on the 16th there was about 3 hours of conversation between the President

and John Dean, and the President and Mr. Petersen. We have tape recordings of two of those conversations.

And then on the 17th there was another conversation for about 1 hour with Mr. Petersen. That means that on the 14th there was close to 7 hours of conversation, and on the 17th there was close to 6 hours of conversation, and on the 16th there was close to 4 or 4½ hours of conversation in these edited transcripts.

Mr. Chairman, we are going to move right along with the hope that we can get to the tape recordings this morning. We will start with tab 34.

Mr. DAVIS. Tab 34, on April 12, 1973, the President telephoned Charles Colson at 7:31 p.m. and asked Colson to prepare a specific set of recommendations with respect to the Watergate matter. The following day, Colson met with Ehrlichman twice. At the second meeting, Colson was accompanied by his lawyer.

Ehrlichman testified that at the second meeting Colson said that he understood that Howard Hunt would testify before the grand jury, that the second break-in at the Watergate was opposed by Hunt, but that Liddy said to Hunt that he couldn't call it off because they were doing it on Mitchell's order; that Hunt would testify about the transmittal of funds to the Watergate defendants; and that McCord was making allegations about a trip to Las Vegas by Hunt, McCord and possibly Liddy to break into the safe of Hank Greenspun in a project masterminded by Colson.

Colson has stated that he recommended to Ehrlichman, among other things, that the President take steps to expose those involved in the planning, approving, or authorizing of the Watergate break-in.

Mr. DOAR. In connection with these allegations that Mr. Colson reported to Mr. Ehrlichman, Mr. Colson made clear in his testimony that the allegations involving himself were not true. He denied them in the conversation. Paragraph 35.

Mr. DAVIS. Tab 35, on April 13, 1973, the day Magruder began meeting with the prosecutors, Lawrence Higby, staff assistant to Haldeman, had two telephone conversations with Magruder which were taped without Magruder's knowledge.

Higby asked Magruder whether his testimony was going to be damaging to Strachan and Haldeman. Magruder said it would damage Strachan, but he had not talked to Haldeman about the Watergate until long after.

Higby told Magruder that it wasn't in his long- or short-term interest to blame the White House.

On April 14, 1973, Ehrlichman and Haldeman reported these conversations to the President. Ehrlichman told the President that Higby had handled Magruder so well that Magruder had closed all his doors now with this tape; that the tape would beat the socks off Magruder if he ever got off the reservation.

Mr. DOAR. Tab 36.

Mr. DAVIS. Tab 36, on April 14, 1973, the President met with Ehrlichman—

Mr. McCLORY. Mr. Chairman, could I just inquire, are we going to hear these tapes?

Mr. DOAR. We have transcripts of the tapes, but the tapes, we did not intend to play these tapes. They are available to be played. The entire transcript is in the book.

Mr. DAVIS. Tab 36, on April 14, 1973, the President met with Ehrlichman from 8:55 to 11:31 a.m., and with Haldeman from 9 to 11:30 a.m. At this meeting the President instructed Ehrlichman to meet with Mitchell.

The President was advised that the grand jury was focusing on the aftermath. There was a discussion of payment to the Watergate defendants and of the transfer of \$350,000 from Strachan to LaRue to be used for payments to the defendants.

In response to the committee subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 36.2 is a summary of the transcript that was furnished to the committee by the White House. This summary is an aid to the committee, to which some committee members or all of them may find helpful in reading the transcript. We have made every effort to summarize them fairly and accurately, and to key our summaries to particular pages in the transcript. They are a guide, they are an aid. But, of course, the best evidence we have to date is the transcript itself. Tab 37.

Mr. DAVIS. Tab 37, on the afternoon of April 14, 1973, Dean, Haldeman, and Ehrlichman met in Ehrlichman's office. Dean has testified that there was a discussion of whether Haldeman, Ehrlichman, Dean, Mitchell, Colson, or others would be indicted.

Mr. DOAR. Tab 38.

Mr. DAVIS. Tab 38, on April 14, 1973, at 1:30 p.m., Haldeman had a telephone conversation with Mr. Magruder and taped the conversation. Magruder told Haldeman that he had committed perjury many times; that he had decided to follow his lawyer's advice and make a full disclosure to the grand jury; that it put Gordon in a spot; and that he intended to plead guilty.

Mr. DOAR. Tab 39.

Mr. JENNER. Excuse me, John. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. That second sentence is a statement that Magruder had now decided to follow his lawyer's advice and make a full disclosure to the grand jury.

Mr. DAVIS. Tab 39, on April 14, 1973, at the President's request, Ehrlichman met with Mitchell from 1:40 to 2:10 p.m. Ehrlichman told Mitchell that the President had instructed him to talk to Mitchell and say not to hold back on account of the Presidency. Mitchell said that he was going to stay where he was because he was too far out. Mitchell said that he got euchred into it by not paying attention, and that the whole genesis of this thing was at the White House.

Mitchell told Ehrlichman that Dean had been caught in the middle like so many others that were trying to keep the lid on until after the election, and trying to keep the lid on all of the other things that had gone on at the White House.

Magruder's pending disclosures to the prosecutors were also discussed. Mitchell told Ehrlichman that some of the White House funds

had been used to make payments to the defendants, with Haldeman's approval, prior to the return of the money to Fred LaRue.

Mr. DOAR. Tab No. 40.

Mr. DAVIS. Tab 40, on April 14, 1973, the President met with Haldeman from 1:55 to 2:13 p.m. Haldeman reported to the President on his telephone conversation with Magruder. There was a discussion of what Haldeman and Strachan would say if Magruder testified that he had sent Gemstone materials to Strachan.

In response to the committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 41.

Mr. DAVIS. Tab 41, on April 14, 1973, the President met with Haldeman and Ehrlichman from 2:24 to 3:55 p.m. At this meeting Ehrlichman reported on his meeting with Mitchell. There was a discussion of motive for the payments to the defendants and the transfer of the \$350,000 from the White House to the committee.

The President instructed Ehrlichman to meet with Magruder. There was a discussion whether it would reduce the likelihood of Department of Justice followup if Ehrlichman gave a report to Kleindienst rather than Silbert.

In response to the committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab No. 42.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Ladies and gentlemen, when we say a summary of the transcript has been prepared, we mean it is included under the tab.

Mr. DAVIS. Tab 42, on April 14, 1973, John Ehrlichman met with Jeb Magruder and his attorneys. Ehrlichman informed Magruder and his attorneys that he was conducting an investigation for the President. Magruder and his attorneys discussed with Ehrlichman the information which Magruder had disclosed to the prosecutors earlier that day to the effect that at a meeting in Key Biscayne, Mitchell, LaRue, and Magruder had participated in an express and specific approval of the plan to break into and bug the DNC headquarters, and bug McGovern's headquarters, and the Fontainebleau Headquarters of the Democratic Convention.

Mr. DOAR. Tab 42.3 is Mr. Ehrlichman's notes of that interview, and at page 2938 you see in the middle of the page, and this is 2938 of tab 42.3, you see the reference to LaRue, Mitchell, and Magruder at Key Biscayne, "presented Lid last proposal" and then the word "approved" under that, and there's three places, Watergate, McGovern, and the Fontainebleau. This is the interview that Mr. Ehrlichman held on the 14th with Mr. Magruder. Tab 43.

Mr. DAVIS. Tab 43, on April 14, 1973, the President met with Haldeman and Ehrlichman from 5:15 to 6:45 p.m. Ehrlichman reported to the President on his meeting with Magruder and his attorneys. The President instructed Haldeman to give Strachan a report of Magruder's testimony.

There was a discussion of the motive for the payments to the defendants.

In response to the committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 44.

Mr. DAVIS. Tab 44, on April 14, 1973, at approximately 6 p.m. and during the meeting specified in the preceding paragraph, Ehrlichman telephoned Kleindienst. Ehrlichman told Kleindienst that he had been conducting an investigation for the President.

There was a discussion of what Ehrlichman should do with the information he had uncovered. Kleindienst has testified that Ehrlichman told him that the testimony that Magruder had given to the U.S. attorneys would implicate people high and low in the White House and in the campaign committee.

The President has produced an edited transcript of this conversation. According to this transcript, Ehrlichman stated that the information provided by Magruder implicated people up and down in the Committee to Re-elect; and, when Kleindienst asked who Magruder implicated besides himself and Mitchell, Ehrlichman answered, Dean, LaRue, Mardian, and Porter.

Mr. DOAR. If you look, members of the committee, at 42.2 or 44.2, excuse me, you will see Mr. Kleindienst's testimony before the Senate select committee on, I guess it was, in August of 1973.

At the very bottom of the page you will see the last paragraph where Mr. Kleindienst is testifying, and he said:

My purpose was to try to help Mr. Ehrlichman out and give an indication of what the law was and what can happen if you do certain things. He said, "Well, it doesn't really make any difference any more." And I said, "Why not, John?" And he said, "Mr. Magruder has been over here at the White House this afternoon and telling us that he has been meeting with the U.S. attorney's office and giving them testimony and evidence that would implicate people high and low in the White House and in the campaign committee."

If you look at 44.4 you have Mr. Kleindienst's testimony before the grand jury, and at page 69 of that testimony at the very top of the page, he again says that Magruder was "telling us—saying to them—implicates people high and low in the White House and the Campaign Committee."

Now, the transcript, if you look at 44.5, the fourth line from the bottom, the transcript says, "implicates everybody in all directions up and down in the Committee to Re-elect." So, there is a conflict there that I want to call your attention to. Tab 45.

Mr. DAVIS. Tab 45, on April 14, 1973, the President had a telephone conversation with Haldeman from 11:02 to 11:16 p.m. There was a discussion of what would be said to Strachan about the information Magruder was giving to the prosecutors.

There was also a discussion about the motive for making payments to the defendants.

In response to the committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 46.

Mr. DAVIS. Tab 46, on April 14, 1973, 11:22 to 11:53 p.m., the President had a telephone conversation with John Ehrlichman. There was a discussion of what Ehrlichman would say to Colson and Strachan about his conversation with Magruder and what Ehrlichman would say to Dean about a plan to deal with obstruction of justice allegations. There was also a discussion of whether Haldeman should be dismissed.

In response to the committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 47.

Mr. DAVIS. Tab 47, during the evening of April 14, 1973. Petersen was briefed by the prosecutors on the information furnished by Dean and Magruder. Petersen telephoned Kleindienst and arranged to report to him immediately.

On April 15, 1973, Kleindienst met at his home with Petersen, U.S. Attorney Titus, and Chief Prosecutor Silbert from approximately 1 to 5 a.m. Kleindienst was briefed on evidence implicating high White House and CRP officials in the Watergate break-in and in the obstruction of the Government's investigation.

Kleindienst decided to arrange a meeting with the President that morning.

Mr. DOAR. Members of the committee, the material from tab 36, which is the second tab or the third tab of the book, through the first sentence of tab 47, all relates to Saturday, the 14th of April. And just to summarize for you again, the materials that you have with respect to that day are the 6 hours and 40 minutes of recorded conversations between the President and Mr. Ehrlichman, and Mr. Haldeman, or between the President and one or the other of them. You have the interviews that Mr. Haldeman had with Mr. Magruder, the telephone conversation that Mr. Haldeman had with Mr. Magruder. You have the interview that Mr. Ehrlichman had with Mr. Magruder, and Mr. Mitchell, and you have the telephone conversation that Mr. Higby—no, excuse me, that is the telephone conversation between Mr. Higby and Mr. Magruder was the day before. And you also have the activity at the U.S. Attorney's office, where Mr. Magruder and Mr. Dean are talking to the prosecutors and are giving them information with respect to what they allege occurred in connection with the Watergate break-in and the aftermath. That is the setting of the material that you have in this notebook.

And now we move to the next day, the 15th, which began with a meeting at the home of Attorney General Kleindienst. This is Sunday, between 1 and 5 o'clock in the morning. And Mr. Kleindienst's testimony is at 47.2 in which he relates he met for 4 hours at his home and was briefed by Mr. Petersen, U.S. Attorney Titus, and Chief Prosecutor Silbert, and then at the end of that meeting it was agreed, as he says at 47.2, page 3573: "As a result of that meeting we agreed that I had to see the President. I put in a call to the White House at 8:30 a.m." That's Sunday morning, tab 48.

Mr. DAVIS. Tab 48, on April 15, 1973, at 8:41 a.m., Kleindienst attempted to reach the President by telephone to request an immediate

meeting. The President returned Kleindienst's call at 10:13 a.m. and agreed to meet with Kleindienst that afternoon.

Mr. DOAR. I would like to take a little time with the diary on the 15th of April because of the fact that the tape ran out that day for the recording of conversations in the President's office in the Executive Office Building.

It starts with late conversations by the President through 12:45 a.m. in the morning, or excuse me, 1:04 o'clock, and then you see at 8:41 o'clock, the Attorney General called the President. And at 10:13 o'clock the President talked with the Attorney General. And then at 10:35 to 11:15 o'clock the President met with John Ehrlichman. There is an edited transcript of a recorded conversation of that meeting.

And then from about 11:15 through 1 o'clock there was a worship service at the White House, and there were guests at the White House as you see through 1:12 o'clock on the next page. And at 1:12 to 2:22 o'clock is when the President, and this is page 2 of the diary, the President met with Attorney General Kleindienst. And there the tape ran out at the end of that conversation.

I am not sure as to the reason for the question mark at 2:30 o'clock between 2:22 and 2:30 o'clock on this, but for the next hour the President met with Mr. Ehrlichman and then the President talked with Mr. Haldeman, and then the President called Attorney General Kleindienst. And then the President met from 4 to 5:15 o'clock with Attorney General Kleindienst and Mr. Petersen. There is no recorded conversation of the meetings with Mr. Ehrlichman, Mr. Haldeman, or Mr. Kleindienst and Mr. Petersen.

Mr. SEIBERLING. I believe you said that the President called Attorney General Kleindienst, but actually it looks like Attorney General Kleindienst called the President.

Mr. DOAR. Yes, excuse me. That is right. Then the President was out through the supper hour, and he returned to the Executive Office Building at about 7:43 o'clock. And then he had a 1 hour and 25 minute meeting with Mr. Ehrlichman and Mr. Haldeman. And then he talked twice to Mr. Petersen. And those conversations were recorded. The telephone conversations were recorded, whereas the meetings were not because of the tape.

And then the President had a meeting for almost an hour with John Dean. And then the President talked with Mr. Petersen again. And then he met for 1 hour with Mr. Haldeman and Mr. Ehrlichman.

And then at the very end of the day he talked to Mr. Petersen. I don't believe that conversation is recorded either.

Ms. HOLTZMAN. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

Mr. DOAR. I don't believe that conversation was recorded on that phone.

Ms. HOLTZMAN. At the top of the beginning of this dairy in a place in the upper left hand corner, there is an asterisk with the words "revised 7/26/73." What does that mean? Was the log revised? Was there any change in the preparation of the log?

Mr. DOAR. Ms. Holtzman, we have a document in one of the next books that explains that. There is a memo on it. It will be included

in the next book. There is an explanation of why it was revised by an employee of the White House.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Just a question of clarification. Mr. Doar, do I understand that starting with all meetings between the President and other individuals starting at 1:12 p.m. right through to the last one that started at 11:45 p.m., we have no record of any sort of those meetings?

Mr. DOAR. That is correct.

Mr. FISH. Thank you.

Mr. DOAR. It is not 1:12 o'clock though, it is 2:22 o'clock. We do have the record of the meeting with the Attorney General.

Mr. FISH. Fine. Thank you.

Mr. SEIBERLING. But all telephone conversations were recorded?

Mr. DOAR. I think all of the telephone conversations were recorded except the last one. Tab 49.

Mr. DAVIS. Tab 49, on April 15, 1973, John Ehrlichman met with Gordon Strachan from approximately 10 to 10:35 a.m. and 11:15 o'clock to noon. They discussed Strachan's recollection of his contacts with Mr. Magruder and Haldeman relating to Watergate.

Ehrlichman has testified that he confronted Strachan with Magruder's allegation about sending Strachan a budget which included specific reference to bugging, and that Strachan said he was sure he had never seen anything like that.

Ehrlichman's notes of that meeting with Strachan reflect a reference to a memorandum from Strachan to Haldeman stating a sophisticated intelligence operation is going with a 300 budget.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman. Ladies and gentlemen, we have checked while that paragraph was being read, and the fact is, that the telephone conversation from 11:45 to 11:53 o'clock was, in fact, recorded.

Mr. DOAR. Members of the committee, if I could refer you to 49.2 which are Mr. Ehrlichman's notes, at page 2920, at the top of the page is Mr. Ehrlichman interviewing Strachan. And you see there that it says, "S to H memo."

And there is, "A sophisticated intell op is going w/a 300 budget."

Then further down you will see that there is a note, "Mon after 6/17 showed it to H? If he ever read the tab."

And then at 49.6—

Mr. RAILSBACK. What's the date of the memo?

Mr. DOAR. The date of the memo?

Mr. RAILSBACK. The date of the note that you just referred to?

Mr. DOAR. The notes are on April 15.

Mr. BUTLER. Counsel, I recall this was sophisticated intelligence operation and so forth, and I thought that was the memo that was shredded.

Mr. DOAR. It was, but this is an interview that Mr. Strachan has describing that memo that was shredded.

Mr. BUTLER. I am sorry. I thought it was presented to him and he looked at it.

Mr. DOAR. No, sir. It is just his recollection of that.

Mr. BUTLER. Thank you. Excuse me.

Mr. DOAR. Mr. Jenner raises the question about this exhibit that Congressman Flowers raised the other day about this exhibit because this first page it is 4/13, but if you look at the first page, 2915, they are notes on 4/13 and 2918 are notes on 4/15.

Mr. JENNER. That's right. At the top line of each of those two pages there is a date, and that indicates the date of the conversation and when the notes were made.

Mr. DOAR. Now, here is, at 49.5. Ms. Holtzman, is the memorandum explaining the revision. And if you will see right under tab 1—before I say that, Mr. Jack Nesbitt apparently is the man who is in charge of the Presidential papers as an archivist, and I believe he has overall supervision of the pulling together of these Presidential diaries. And if you see, his office called to Mr. Hart's attention the discrepancies. This is written on July 24, 1973, the discrepancies with certain individuals meeting with the President, and had asked for clarification on these points.

In July the Special Prosecutor was asking for and the White House had delivered the logs of meetings between certain of the key White House aides and the President. And in this memorandum, Mr. Hart explains the discrepancies, and said apparently in the first diary there was shown that there was no meeting in the Oval Office between 10:35 and 11:15 o'clock, and Mr. Hart relates that the President did, in fact, meet with Mr. Ehrlichman in the Oval Office during that period of time.

And, of course, there is a transcript, an edited transcript of the meeting, recorded conversation for that meeting. And it was explained that this went unnoticed by the Secret Service who on Sunday had the responsibility for logging the President's movements during the day, so that it could be forwarded to Mr. Nesbitt and his people to place on this combined diary.

And then there were three changes in this diary, also with respect to certain of the meetings between the Attorney General and the President, and the fact that Mr. Rebozo did not meet with the President that afternoon, but waited outside the President's office with Colonel Golden until Attorney General Kleindienst and Mr. Peterson entered the office to meet with the President. And then Mr. Rebozo went over to the residence.

So, this particular diary was corrected, and Mr. Hart's memorandum is a memorandum explaining those corrections.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. What, if any, of those recordings on the 14th and 15th do we have? Any at all?

Mr. DOAR. Well, we have all of the recordings on the 14th.

Mr. OWENS. We have them all?

Mr. DOAR. Yes, the 6 hours and 40 minutes of recordings between the President—

Mr. SEIBERLING. You mean transcripts, edited transcripts.

Mr. DOAR. Excuse me. We don't have any of the recordings.

Mr. OWENS. Nothing from the 14th or 15th?

MR. DOAR. No. We don't have any recordings. We don't have any recordings on the 14th and the 15th. There is a matter that we will get to later that either on the 16th or on the 19th the President told Henry Petersen that he had a conversation with John Dean taped on that day, and he offered to let Mr. Petersen see the tape. Mr. Petersen declined to listen to the tape. And then later on, there was a discussion about that, and Mr. Buzhardt told Mr. Cox that that wasn't a tape, that was a dictabelt of the President's recollection of the conversation. That dictabelt has not been located.

MR. McCLORY. Mr. Chairman, may I ask this question?

THE CHAIRMAN. Mr. McClory.

MR. McCLORY. The notes, these little abbreviated notes, are a little difficult for me to interpret. Do you regard Mr. Ehrlichman's testimony before the grand jury as being an accurate or relatively accurate interpretation of his own notes?

MR. DOAR. Well, I don't know. I don't know of any instance where it is inconsistent, but I can't represent that I can tell you in every way it is consistent.

MR. McCLORY. Well, it is the best interpretation that we have of the notes?

MR. DOAR. That's right.

MR. McCLORY. And there is no inconsistency?

MR. DOAR. None that I know of, and if I do know of some, I will call them to your attention.

MR. McCLORY. I just wanted to make sure I understand. Thank you.

MR. JENNER. His testimony, Congressman McClory, may not have covered everything that is in the notes.

MR. COHEN. Mr. Chairman?

THE CHAIRMAN. Mr. Cohen.

MR. COHEN. Mr. Chairman, could I inquire of counsel? I notice in this memo, Mr. Doar, that Mr. Hart points out that it probably went unnoticed by the Secret Service because Mr. Ehrlichman came in through a private door. Was there any explanation given as to how the President's returning to the office went unnoticed during that period of time? In other words, Mr. Hart seems to point out that there was no meeting according to that memo because Mr. Ehrlichman came in perhaps unnoticed through this private door, but according to the other part, the President wasn't even supposed to be in the Oval Office between 10:35 and 11:15. How would he have entered?

MR. DOAR. Well, he could have—I don't know the answer to that. He could have come in through the garden entrance.

MR. COHEN. Mr. Hart doesn't direct himself to that?

MR. DOAR. Mr. Hart doesn't direct himself to that. I can't even speculate. Tab No. 50.

MR. DAVIS. Volume 4, tab 50. On April 15, 1973, the President met with John Ehrlichman from 10:35 to 11:15 a.m. Ehrlichman reported that he was meeting with Strachan. There was a discussion of the motive for payments to the defendants and of what Dean's defense might be to obstruction of justice charges.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an

edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Mr. Chairman, if I could digress a minute, I neglected to introduce to the committee members three members of the staff. Richard Gill from Montgomery, Ala., is at my far left, and John Labovitz is sitting next to him, and Bob Brown is sitting behind me. Richard Gill is the task force leader of the area that is investigating domestic surveillance, and the "plumbers" operation and the subsequent domestic intelligence activities of the White House.

Mr. Labovitz has worked principally on our constitutional and legal research, but he also has served as an editor of these books.

And Bob Brown is one of the lawyers, he is the lawyer on the permanent staff that has worked on the Watergate task force.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I am sorry, but I must have missed somehow or other the whole sequence of what we were doing back there. Why were we so troubled with correcting the log or ascertaining who was in the office at a certain time? What was the significance of all of that exercise?

Mr. DOAR. Well, I don't know the significance of the exercise.

Mr. WALDIE. I mean, why did you include and dwell on it so long?

Mr. DOAR. Because Ms. Holtzman asked a question.

Mr. WALDIE. Well, but you included as a tab a historical or an archivist's explanation of that. Is there something that we ought to understand as to why it is important to have these times precisely set?

Mr. DOAR. No, but I think it is important for the committee to appreciate the accuracy and the care with which the Presidential diaries were kept.

Mr. WALDIE. All right.

Mr. DOAR. And that here was an instance where a mistake was discovered, and you can speculate that it was discovered because there was a recorded conversation. People were listening to recorded conversations during the period and found that there was a conversation between the President and Mr. Ehrlichman on the morning, on the Sunday morning in the Oval Office, and there was no evidence of a meeting. And that's just a speculation. But, it was corrected in July. And well, about the 1st of June, Mr. Cox had written to the White House for the logs of meetings between the President and his key associates.

Now, I don't draw any particular significance to it except that I do think that it does tend to give credence to the reliability of the Presidential diaries.

Mr. WALDIE. Well, that's important for me to know why you included it, and I understand now, and I didn't before, and I appreciate it.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 50. Tab No. 51.

Mr. DAVIS. Tab 51, on April 15, 1973, the President met with Attorney General Kleindienst from 1:12 to 2:22 p.m. in the President's EOB office. Kleindienst reported to the President on the evidence against Mitchell, Dean, Haldeman, Ehrlichman, Magruder, Colson, and the others. Kleindienst has testified that the President appeared dumbfounded and upset when Kleindienst told him about the Water-

gate involvement of administration officials, and that the President did not state that he had previously been given this information by John Dean.

The President asked about the evidence against Haldeman and Ehrlichman and made notes on Kleindienst's response. There was a discussion of the payments to the defendants and what motive had to be proved to establish criminal liability. There was a discussion of the transfer of \$350,000 from the White House to LaRue.

The President made a note: "What will LaRue say he got these 350 for?"

The committee has subpoenaed the tape recording and other evidence of this conversation. The President has stated that the tape on the recorder for his EOB office ran out during his afternoon meeting with Kleindienst. The President has produced an edited transcript of a recording of a portion of the conversation. A summary of that transcript has been prepared.

Mr. DOAR. The committee may wish to look at 51.2, which are President Nixon's notes of the meeting with Mr. Kleindienst right after lunch on Sunday, and the report that the Attorney General gives him with respect to Dean. And underneath that is, "Deep 6 documents," and "to get Hunt out of the country."

And then, "Haldeman, Strachan will give testimony, H. D. papers indicating Liddy was in eavesdropping," and then, "\$350,000 to LaRue." And there's a note, "Barnabas Sears," and then "Liddy has not talked. Hunt." And there's two lines, "My opposite, Sneed."

Mr. SEIBERLING. My appointee, Sneed.

Mr. DOAR. My appointee, Sneed. And then, "What will LaRue say he got the 350 for." And then underneath that, "Gray-documents."

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies and gentlemen of the committee. Barnabas Sears is a Chicago trial lawyer, who conducted the grand jury proceedings and an indictment and prosecution of the Panthers arising out of the raid of the states attorneys police of the Panther apartment. He was also a special prosecutor and prosecuted the Sumnerdale police scandal back in 1961.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I think along those same lines, my recollection is he was mentioned as a possibility for being a special prosecutor in this case.

Mr. JENNER. Yes, he was, and I did not mention that, Congressman Railsback, because we had brought that to your attention earlier.

Mr. OWENS. Was that not by Chief Justice that he was mentioned?

Mr. JENNER. Yes, it was.

Mr. WIGGINS. Mr. Chairman, it is my recollection that the recommendation of Barnabas Sears came from Kleindienst.

Mr. OWENS. Did it not also come from the Chief Justice? Am I inaccurate in that?

Mr. JENNER. Congressman Wiggins, that also could be so and we will check it out. But it is a fact that the Chief Justice himself did suggest Mr. Sears.

Mr. WIGGINS. I see.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Could I just ask this question: Does Barnabas Sears appear elsewhere in the course of this presentation?

Mr. JENNER. Earlier, Congressman McClory, in the earlier books, the report was made to you that the Chief Justice had suggested to the President the possible selection of Mr. Sears as the Special Prosecutor.

Mr. DOAR. If the committee would look at page 86 the summary of 51.6, you will see that the discussion of Barnabas Sears between the President and Mr. Kleindienst appears on pages 20 and 21 of the edited transcript. No. 52.

Mr. DAVIS. Tab 52, on April 15, 1973, from 2:24 to 2:30 p.m., the President met with Ehrlichman in the President's EOB office. From 3:27 to 3:44 p.m., the President spoke to Haldeman by telephone and discussed conflicts between the recollection of Magruder and Strachan concerning conversations about Watergate. At 3:48 p.m., the President returned a telephone call from Kleindienst and agreed to have Petersen join their upcoming meeting.

In response to the committee's subpoena for the tape recording and other evidence of the President's meeting with Ehrlichman, his telephone conversation with Haldeman, and his telephone conversation with Kleindienst, the President has produced edited transcripts of the recordings of the Haldeman and Kleindienst telephone calls. Summaries of those transcripts have been prepared. The President has stated that the tape on the recorder for his EOB office had run out during his afternoon meeting of April 15, 1973, with Kleindienst and that no further conversations in that office were recorded.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. This question refers to this tab and the one just preceding it.

When you examined the extent of the recorded tapes, how far in the subjects of the President's notes does the recorded tape go before it ran out? Or do we know?

In other words, I presume that the President made sequential notes of his conversation. How far does the tape go in terms of the sequence of the notes he took?

Mr. DOAR. You are speaking now with respect to the Kleindienst conversation?

Mr. WALDIE. Kleindienst.

Mr. DOAR. We do not have the tape, but how far down in the edited transcript, I just cannot recollect that right now. We will check that and report to you right after lunch.

Mr. WALDIE. No one has had access to the portion of the tape that exists before the machinery ran out?

Mr. DOAR. No.

Mr. FISH. Mr. Chairman, I understand that the meeting between Kleindienst and the President was between 1:12 and 2:22 at which time the tape ran out. Yet there is talk here of a meeting of the President and Ehrlichman which started after that, which started at 2:24. You say the President has produced edited transcripts.

No, that is just referring to the telephone conversations. The tape was not activated at any time during that afternoon?

Mr. DOAR. No, not at any time during that afternoon or evening.

Mr. FISH. Thank you.

Mr. JENNER. Mr. Chairman, I think in the future where there is a telephone conversation, in the annotation, we will put the words "telephone conversation" in there so the committee will realize there is a distinction with respect to the subject matter just discussed.

The CHAIRMAN. I think that will be helpful. Ms Holtzman.

Ms. HOLTZMAN. I wonder if you have been able to analyze the logs for the 14th to determine whether or not there are sufficient conversations in the EOB to account for the use of the tape in accordance with the President's public statements as to that. If not, I wonder if at some point, you could provide us with that analysis.

Mr. DOAR. I have not analyzed them closely, but I will do that.

Ms. HOLTZMAN. I would appreciate that, thank you.

Mr. DOAR. Congressman Waldie, we have checked. I think that the notes of the President and the edited transcript run down to the item just before there is written in President Nixon's notes, "Gray documents." I do not think there is any discussion to the——

Mr. WALDIE. Where is that tab again?

Mr. DOAR. The tab is at 51 and the notes are at 51.2. The summary is at 51.6.

Mr. WALDIE. And it runs down to "Gray" and "documents."

Mr. DOAR. The transcript runs through the discussion about what Mr. LaRue said about the 350, is that right?

Mr. DAVIS. Yes.

Mr. DOAR. That is included in the transcript.

Mr. WALDIE. So is Barnabas Sears.

Mr. DOAR. I know. That is earlier.

Your question, as I understood it, is whether or not the tape ran out at some time prior to the end of the conversation.

Mr. WALDIE. Oh, all right. Then I guess what I am really saying is if the President took notes of his entire conversation, we either do not have all of his notes, or else he spent about 4 hours talking about Gray or whatever time elapses. "Gray" and "documents" are the only things not covered in the edited transcript that he provided us?

Mr. DOAR. That is my understanding, yes.

Mr. WALDIE. So whatever the difference between the time that the tape ran out——

Mr. DOAR. And 2:22.

Mr. WALDIE [continuing]. Was devoted to a discussion of Gray and documents?

Mr. DOAR. That would be what it would appear.

Mr. WALDIE. It would appear that way unless we do not have all of his notes?

Mr. DOAR. That is right.

Mr. WALDIE. Do we have any determination as to whether we have all of his notes?

Mr. DOAR. These are the only notes that were provided to the Special Prosecutor.

Mr. WALDIE. Does that seem to make sense? I have not worked out the time sequence. Does the time sequence where the tape ran out properly cover the sequence as to which he took notes?

Mr. McClory. Mr. Chairman, I am wondering whether the questioning as to making sense goes beyond the——

The CHAIRMAN. Yes, I think that counsel cannot answer that question. I think that the member will have to draw his own conclusions as a result of the evidence that has been presented.

Mr. Doar, might I inquire how long it is going to be before you get to that portion of the presentation which is going to involve the listening to the tapes, since I think it would serve us better if we could listen to the tape, which is going to take approximately 1 hour and 10 minutes uninterrupted?

Mr. DOAR. We have some rather long paragraphs, but there is very little comment on the paragraphs, so we will get there within 15 minutes, maybe 20 minutes.

The CHAIRMAN. Fine. Let us go through without any questions until that time and reserve questions until afterwards, because I think it is important to get this tape listening out of the way before noon-time, since the interruptions would, I think, interfere with a proper listening to the tape.

Mr. JENNER. Mr. Chairman.

The CHAIRMAN. Mr. Jenner?

Mr. JENNER. Thank you. Mr. Chairman, ladies and gentlemen.

While it does revert to Mr. Waldie's questions. I think it refers to the President, the possible inference drawn by Mr. Waldie that we do not have all of the President's notes of the conversation in question. There is another possibility, and that is that the President did not make any notes beyond the notes that are reflected here.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab 53.

Mr. DAVIS. Tab 53, on April 15, 1973, Petersen and Kleindienst met with the President from 4 to 5:15 in the President's EOB office. Petersen has testified that he reported on the information that the prosecutors had received from Dean and Magruder and that his report included the following: That Mitchell had approved the \$300,000 budget for the Liddy Gemstone operation; that budget information for Gemstone and summaries of intercepted conversations were given to Strachan and that information given to Strachan was for delivery to Haldeman; that if the prosecutors could develop Strachan as a witness, "school was going to be out as far as Haldeman was concerned"; that Ehrlichman through Dean informed Liddy that Hunt should leave the country; and that Ehrlichman had told Dean to "deep six" certain information recovered by Dean from Hunt's office. Petersen has also testified that he recommended that Haldeman and Ehrlichman be dismissed, but Dean be retained while cooperating with the prosecutors. Petersen has testified that the President: exhibited a lack of shock and emotion; spoke well of Haldeman and Ehrlichman; suggested that Dean and Magruder were trying to exculpate themselves; suggested a cautionary approach to the granting of immunity; stated that he had first learned that there were more significant problems than he had anticipated on March 21, 1973, although he did not tell

Petersen what Dean had told him on that date; stated that he had told Dean to write a report but that Dean had been unable to write a report; stated that he told Ehrlichman to conduct an investigation after Dean failed to deliver his report; stated that Haldeman and Ehrlichman had denied the charges against them; and requested that Petersen reduce to writing what he had said to the President about Haldeman and Ehrlichman.

Mr. DOAR. Tab 54.

Mr. DAVIS. Tab 54, on April 15, 1973, the Watergate prosecutors interviewed John Dean. The prosecutors were informed that Gordon Liddy and E. Howard Hunt had participated in the break-in at the office of Daniel Ellsberg's psychiatrist. Dean stated that not all the material from Hunt's safe has been turned over to FBI agents after the Watergate break-in, but that certain materials from the safe were personally handed by Dean to Gray.

Mr. DOAR. Tab 55.

Mr. DAVIS. Tab 55, on April 15, 1973, at approximately 7:30 p.m., Ehrlichman requested a meeting with Dean. Dean's attorney discussed this request with Petersen, who advised against such a meeting. Dean arranged to have the President told that Dean was acting out of loyalty to the President and that Dean felt the meeting requested by Ehrlichman was inappropriate at this time. The President telephoned Petersen and spoke with him from 8:14 to 8:18 p.m. and from 8:25 to 8:26 p.m. Petersen told the President about Ehrlichman's request to meet with Dean. The President asked if Petersen would have any objection to his meeting with Dean. Petersen said he had no objection. The President arranged to meet with Dean that evening.

In response to the committee's subpoena for the tape recording and other evidence of the President's telephone conversations with Petersen, the President has produced edited transcripts of the recordings. A summary of these transcripts has been prepared.

Mr. DAVIS. Tab 56, on April 15, 1973, from 9:17 to 10:12 p.m., the President met with John Dean in the President's EOB office. Dean has testified that he reported to the President that he had been to the prosecutors; that the President asked him about Haldeman's knowledge of the Liddy plans; that the President stated he had been joking when he said it would be easy to raise the \$1 million to pay for maintaining the silence of the Watergate defendants; and that the President said in a nearly inaudible tone that he had been foolish to discuss Hunt's clemency with Colson.

Dean also has testified that he told the President he had not discussed with the prosecutors his conversations with the President and that the President told him that he could not telephone the prosecutors about national security matters or about any of the conversations between the President and Dean.

Dean has testified that the nature of the President's questions led him to think that the President was taping the conversation. The President's notes of this meeting indicate that the President asked Dean what he had told Kalmbach about the purpose of the money and that Dean said he had briefed Haldeman and Ehrlichman every inch of the way. During this meeting, the President phoned Petersen from 9:39 to 9:41 p.m. and instructed Petersen to contact Liddy's

attorney and tell him that the President wanted Liddy to tell everything he knows.

The President has stated that the tape on the recorder for his EOB office ran out on the afternoon of April 15, 1973. In response to the committee's subpoena for the tape recording and other evidence of his telephone conversation with Petersen, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. I think the committee would want to study carefully tab 56.3 which contains President Nixon's notes of that conversation with Dean. There is a number of questions on the first page and then there are notes about Mr. Ehrlichman on the second page at the top. Mr. Dean. Haldeman, and Ehrlichman in the middle of the second page, and then you will see at the middle of the page, where there is a writing in the middle of the margin, "Dean", "Briefed H and E every inch of way."

Then there is a reference to Mr. Liddy's attorney.

Those are the notes that were furnished to the Special Prosecutor.

Mr. SEIBERLING. Mr. Chairman, have we requested a tape of this meeting between the President and Mr. Dean?

Mr. DOAR. Well, the recording ran out.

Mr. SEIBERLING. That was in the afternoon.

Mr. DOAR. It ran out for the rest of the day.

Mr. SEIBERLING. I beg your pardon. This is p.m.

Mr. DOAR. But there is this testimony by Mr. Dean that he believed that the meeting was taped. There is a testimony by Mr. Petersen that on the 18th, the President told him he had a tape recording of that meeting; and there is the testimony of—at that time, there were very few people who were aware of the recording system in the White House when the conversation between the President and Mr. Petersen took place.

Then there is a letter from Mr. Buzhardt to Mr. Cox on the 16th of June, to the effect that the President, when he spoke to Mr. Petersen, was speaking about a dictabelt of his recollection of that conversation. But there has been no production of that dictabelt or any other tape.

Mr. SEIBERLING. It is possible that they did not realize it ran out at that time.

Mr. DOAR. That is one possibility. That is not consistent with Mr. Buzhardt's letter, however, that what he was talking about, what the President was talking about was a dictabelt of his recollection.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you.

In all the bundle of facts that the committee will consider in this area, there is the possibility to which I think you have now alluded, that when the President was saying that he had a tape, he may have been under the impression—may not have known that the tape had run out and he just assumed that the recorder had been functioning.

That is a possibility. I am not trying to say it is so, I am just saying it is a possibility.

Mr. DOAR. Tab 57.

Mr. DAVIS. Tab 57, on April 15, 1973, from 10:16 to 11:15 p.m., the President met with H. R. Haldeman and John Ehrlichman in the Presi-

dent's EOB office. During this meeting, Ehrlichman, at the President's request, telephoned Patrick Gray and discussed the documents taken from Hunt's White House safe and given to Gray by Dean in June 1972. Shortly thereafter, Ehrlichman telephoned Gray and had a second conversation regarding the contents of Hunt's safe. Ehrlichman told Gray that Dean had told the prosecutors that he had delivered two of Hunt's files to Gray. Gray told Ehrlichman that he had destroyed the documents.

Mr. DOAR. Tab 58.

Mr. DAVIS. Tab 58, on April 15, 1973, from 11:45 to 11:53 p.m., the President had a telephone conversation with Henry Petersen. The President told Petersen that he had met with Dean. There was also discussion of whether the President should ask Dean, Haldeman, and Ehrlichman to resign. Petersen has testified that the President told him that Dean had given the President basically the same information which Dean had previously given to the prosecutors.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 59.

Mr. DAVIS. Tab 59, on April 16, 1973, from 8:18 to 8:22 a.m., the President had a telephone conversation with John Ehrlichman. Ehrlichman has testified that the President stated he was going to ask Dean to resign or take a leave of absence because Dean apparently continued to have access to White House files and because the President and Dean then had basically an adversary relationship.

From 9:50 to 9:59 a.m., the President met with Haldeman and Ehrlichman. There was a discussion of what the President would say to Dean and of what statement might be released to the press.

In response to the committee's subpoena for the tape recording and other evidence of the conversation between the President, Haldeman, and Ehrlichman, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab No. 60.

Mr. DAVIS. Tab 60, on April 16, 1973, the President met with John Dean from 10 to 10:40 a.m. The following is an index to certain of the subjects discussed in the course of that meeting.

President's request that Dean submit a letter of resignation or a request for a leave of absence, and discussion of other resignations. -----	1, 8, 11, 12, 51-53.
March 21, 1973, conversation among the President, Dean, and Haldeman, and what Dean should say about that conversation. -----	17-21, 24-27.
Whether the President would waive executive privilege.-----	22, 28.
How events after the break-in and after March 21 would be described. -----	22-28, 42 thru 43.
What induced Magruder to talk and the President's desire to take credit for Magruder's cooperation.-----	31 thru 34.
President's statements to Dean that Dean should tell the truth. -----	34 thru 35, 44.
Executive clemency.-----	35 thru 36, 46 thru 48.
President's statement that Dean was still his counsel.-----	38.
What should be done about legal problems of White House Aides. -----	38 thru 42, 45 thru 51.

The CHAIRMAN. We are going to listen to tapes now?

Mr. DOAR. One tape, yes.

[Whereupon, a tape of a meeting by the President with John Dean on April 16, 1973, from 10 to 10:40 a.m., was listened to.]

Mr. RAILSBACK. Mr. Chairman.

Mr. WIGGINS. Mr. Chairman, our transcripts are all screwed up. The pages do not run consecutively.

Mr. RAILSBACK. I go from 6 to 15 and he goes from 6 to 23.

The CHAIRMAN. How many books are not consecutively numbered? Four.

Do we have any extras?

Mr. DOAR. We have extras up there right now.

Mr. RAILSBACK. Is it possible to go back and begin at page 6?

The CHAIRMAN. Yes, can you go back to page 6 when you start up again?

All right, start back at page 6.

[Resume listening to tape.]

Mr. DOAR. Four paragraphs, then we go on to the next tape. Tab No. 61.

Mr. DAVIS. Tab 61, on April 16, 1973, from 10:50 to 11:04 a.m., the President, H. R. Haldeman, and John Ehrlichman met. The President reported on his meeting with Dean. There was a discussion of the "scenario" of events after the President became aware that there were some discrepancies between what he had been told by Dean in the report that there was nobody in the White House involved.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 62.

Mr. DAVIS. Tab 62, on April 16, 1973, from 12 to 12:31 p.m., the President met with H. R. Haldeman. There was a discussion of what Haldeman might state publicly about his involvement in the transfer of cash from the White House to CRP.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 63.

Mr. DAVIS. Tab 63, on April 16, 1973, from 1:39 to 3:25 p.m., the President met with Henry Petersen. Ronald Ziegler was also present from 2:25 to 2:52 p.m. During this meeting, Petersen gave the President a report on the investigation and a written memorandum summarizing the prosecutors evidence as of that time implicating Haldeman and Ehrlichman. There was discussion of whether the President should ask Haldeman and Ehrlichman to resign.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 64.

Mr. DAVIS. Tab 64, on April 16, 1973, from 3:27 to 4:04 p.m., the President met with John Ehrlichman and Ronald Ziegler. There was a discussion of the information furnished by Henry Petersen.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 65.

Mr. DAVIS. Tab 65, on April 16, 1973, from 4:07 to 4:35 p.m., the President met with John Dean. The following is an index to certain of the subjects discussed during that conversation.

Presidential statement in regard to Watergate-----	1-3, 15, 18, 26.
Haldeman, Ehrlichman and Dean's continued presence on the White House staff-----	3-7, 24-25.
Magruder's negotiations with the U.S. Attorneys-----	8, 16-17.
President's statement to Dean to tell the truth-----	10.
Dean's proposed testimony before the grand jury in regard to the issue of Haldeman's prior knowledge of the DNC break-in -----	10-15.
Possible discovery of Hunt and Liddy's involvement in Field- ing break-in-----	20-21.
Senate select committee and the failure of "containment" dur- ing the past 9 months-----	22-24.

Ms. JORDAN. Mr. Chairman, could we agree to forgo a quorum if it interrupts this tape—just agree not to go if the House gets in session and there is a quorum call?

The CHAIRMAN. I think we can probably complete it before the quorum. It is only a 28-minute conversation. If we go right ahead, we can be through.

[Whereupon a tape recording of a meeting on April 16, 1973, from 4:07 to 4:35 of the President with John Dean was listened to.]

Mr. JENNER. Mr. Chairman, while the transcripts are being picked up, if the committee will notice in tab 65.1, the second page of the President's log, at the top of the page is the 11:11 p.m. That is an error, whoever typed that. That should be 11:11 a.m., and you will run across that sort of thing in some of the other logs. And the way you test that in each instance is look at the bottom of the previous page, or the first entry, and you will notice on the previous page it is 11:04 a.m. which appears, and then on the next page, to which I direct your attention, the first actual entry is 11:48, so you know when you see 11:11 p.m., that it is a White House innocent error, and I call it to your attention so that you will not be confused in looking at other logs.

The CHAIRMAN. Before we recess until 2:30 this afternoon—all right, we will recess until 2:30 this afternoon.

[Whereupon at 12:03 p.m. the committee was recessed to reconvene at 2:30 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 66.

Mr. DAVIS. Tab 66, on April 16, 1973, from 8:58 to 9:14 p.m., the President spoke by telephone with Henry Petersen. Petersen gave the

President a report. The President said he would not pass the information on because he knew the rules of the grand jury.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 67.

Mr. DAVIS. Tab 67, on April 17, 1973, from 9:47 to 9:59 the President met with H. R. Haldeman. The President instructed Haldeman to tell Kalmbach that LaRue was talking freely. There was a discussion of the problem raised by Dean's efforts to get immunity.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 68.

Mr. DAVIS. Tab 68, on or about April 17, 1973, John Ehrlichman had telephone conversations with Charles Colson, White House Aide Ken Clawson, and former CRP campaign director, Clark MacGregor. Ehrlichman asked Colson and Clawson about their recollections regarding Dean's allegations that Ehrlichman had told Dean to destroy documents from Hunt's safe and to order Hunt to leave the country.

During the course of their conversation Colson and Ehrlichman discussed nailing Dean by seeing that he did not get immunity. Each of these conversations was tape recorded by Ehrlichman.

Mr. DOAR. These transcripts were discussed in an earlier book with the committee. Tab 69.

Mr. DAVIS. Tab 69, on April 17, 1973, at 10:26 a.m. Gray met with Petersen in Gray's office. Gray has testified that he admitted to Petersen that he had received files from Dean in Ehrlichman's office and told Petersen that he had burned the files without reading them.

Petersen told Gray that the Assistant U.S. Attorneys would want him before the grand jury.

During the afternoon of April 17, Petersen told the President that Gray had admitted destroying documents he received from Dean.

Mr. DOAR. Tab 70.

Mr. DAVIS. Tab 70, on April 17, 1973, from 12:35 to 2:20 p.m., the President met with H. R. Haldeman and John Ehrlichman. Ronald Ziegler joined the meeting from 2:10 to 2:17 p.m. There was a discussion about what to do about Dean and what Dean might say if he were fired; about the motive for making payments to the defendants; about what Strachan would say concerning intelligence material received from Magruder; and about whether Dean had reported to the President in the summer of 1972.

There was also discussion of a press plan.

In response to the committee's subpoena of the tape recording and other evidence of that conversation, the President has produced edited transcripts of the recording. A summary of that transcript has been prepared.

Mr. DOAR. Tab 71.

Mr. DAVIS. Tab 71, on April 17, 1973, from 2:39 to 2:40 p.m. the President had a telephone conversation with John Ehrlichman. There

was a discussion of what the President would say to Petersen about immunity for top White House staff.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. This transcript appears to take longer than 1 minute, so that I suspect that there is an error with respect to the time of that conversation, an error in the log. Tab 72.

Mr. DAVIS. Tab 72, on April 17, 1973, from 2:46 to 3:49 p.m., the President met with Henry Petersen. There was a discussion about whether Petersen had passed grand jury information to Dean and about whether Dean would be granted immunity. The President read to Petersen a proposed press statement, and Petersen stated the difficulties which would be posed by a statement that the President opposed granting immunity to high White House officials. Petersen told the President that Gray had admitted receiving from Ehrlichman and Dean documents unrelated to Watergate taken from Hunt's safe. Petersen said that Gray said he had burned these documents without reading them.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. No. 73.

Mr. DAVIS. Tab 73, on April 17, 1973, from 3:50 to 4:35 p.m., the President met with H. R. Haldeman, Ronald Ziegler, and John Ehrlichman. The President described his conversation with Petersen. There was a discussion of whether Haldeman and Ehrlichman should take leave of absence. The President went over the text of the statement he was about to give.

In response to the committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Mr. DOAR. No. 74.

Mr. DAVIS. Tab 74, on April 17, 1973, from 4:42 to 4:45 p.m., the President issued a public statement containing two announcements. The President first announced that White House personnel would appear before the Senate select committee, but would reserve the right to assert executive privilege during the course of questioning. He then reported that on March 21 he had begun intensive new inquiries into the whole Watergate matter, and that there had been major developments in the case. The President stated that he had expressed to the appropriate authorities his view that there should be no immunity from prosecution for present or former high administration officials. The President said that those still in Government would be suspended if indicted and discharged if convicted.

Mr. DOAR. 75.

Mr. DAVIS. Tab 75, on April 17, 1973, the President met in his EOB office with William Rogers from 5:20 to 6:19 p.m., and with H. R. Haldeman and John Ehrlichman from 5:50 to 7:14 p.m. The Presi-

dent briefed Rogers on his investigation and his discussion with Petersen.

There was a discussion of whether Haldeman, Ehrlichman, and Dean should resign and of Dean's testimony against Haldeman and Ehrlichman. Haldeman and Ehrlichman reported on their conversation with John Wilson, a criminal attorney, who had been recommended by Rogers. There was a discussion of what Dean had told Kalmbach about the purpose of the money he was asked to raise.

In response to the committee's subpoena to the tape recording and other evidence of the President's conversations of April 17, 1973, from 5:50 to 7:14 p.m., the President has produced an edited transcript of the recording of his conversation from 5:20 to 7:14 p.m. A summary of that transcript has been prepared.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman. The reference to John Wilson as a criminal attorney, there is no intent to imply any criminality with respect to him, and it might better have been said that he was an attorney who defends in criminal cases.

The CHAIRMAN. I think the committee will recess until it has an opportunity to record its vote and come back immediately after.

[Short recess.]

The CHAIRMAN. The committee will resume, Mr. Doar.

Mr. DOAR. Mr. Chairman, paragraph 76.

Mr. DAVIS. Tab 76, in April 1973, former and present White House aides and CRP officials were interviewed by the prosecutors or called before the Watergate grand jury. These included E. Howard Hunt, Gordon Liddy, Jeb Magruder, Gordon Strachan, Richard Moore, Dwight Chapin, Herbert Kalmbach, James McCord, Fred LaRue, Herbert Porter, John Mitchell, Charles Colson, and John Dean.

Mr. DOAR. Paragraph 77.

Mr. DAVIS. Tab 77, on April 18, 1973, the President had telephone conversations with Henry Petersen from 2:50 to 2:56 p.m. and from 6:28 to 6:37 p.m. Petersen has testified that the President told him that Dean said he had been granted immunity and the President had it on tape, and that Petersen denied that Dean had been granted immunity. Petersen told the President that the prosecutors had received evidence that Gordon Liddy and E. Howard Hunt had burglarized the office of Dr. Fielding, Daniel Ellsberg's psychiatrist. The President told Petersen that he knew of that event; it was a national security matter; Petersen's mandate was Watergate; and Petersen should stay out of the Fielding break-in. The President told Petersen that the prosecutors should not question Hunt about national security matters. After this telephone call, Petersen relayed this directive to Silbert.

In response to the committee's subpoena for the tape recording and other evidence of the telephone conversations between the President and Petersen from 2:50 to 2:56 p.m. and from 6:28 to 6:37 p.m., the President has produced an edited transcript of the conversation from 2:50 to 2:56 p.m., during which the President and Petersen discussed immunity for Dean and Magruder. A summary of that transcript has been prepared. The President has informed the committee that the telephone call from 6:28 to 6:37 p.m. was placed from Camp David and was not recorded.

Mr. DOAR. Paragraph 78.

Mr. DAVIS. Tab 78, on April 19, 1973, John Dean issued a public statement declaring in part that he would not become a scapegoat in the Watergate case. He added that anyone who believed that did not know the true facts nor understand our system of justice. Following Dean's statement, Stephen Bull of the President's White House staff checked with the Secret Service agent in charge of the White House taping system to determine if Dean knew about the existence of the taping system. The agent replied that as far as the Secret Service knew, Dean had no such knowledge.

Mr. DOAR. This information was developed by the grand jury on January 18, when Stephen Bull was questioned, and on January 17, when Louis Sims was questioned. The testimony of Louis Sims, the Secret Service agent, is at 78.4. At 2447, agent Sims was asked:

It it not a fact, Agent Sims, that you have had a conversation with Mr. Bull immediately following John Dean's public announcement in which he said he would not be made a scapegoat, in which Mr. Bull inquired of you as to whether Mr. Dean knew of the taping system.

The answer was "yes sir."

Then at the top of the next page 2448, "And what did you inform Mr. Bull?

Answer. If I recall correctly, I informed him that we had been advised in the Secret Service that they would be keeping this to a limited number of people—that the taping system existed—and that he might rest assured from the Secret Service side that Mr. Dean or anyone else knew—other than Mr. Bull and Mr. Butterfield, but I could not speak for anyone that he might have told.

Tab 79.

Mr. DAVIS. Tab 79, on April 19, 1973, the President met with Richard Moore. They discussed the President's statement of April 17 and the fact that on March 20, 1973, Dean and Moore discussed Dean's telling the President about the Watergate matter. Moore has testified that the President said that he had told Dean that to raise money for the Watergate defendants was not only wrong but stupid. Moore told the President that Dean had shown him a list of individuals who might be indicted and that Dean had said that Ehrlichman's problem might be involved with the Ellsberg case. The President responded that the White House investigation of Ellsberg had to be done because J. Edgar Hoover could not be counted on as he was a close friend of Ellsberg's father-in-law.

Mr. DOAR. Paragraph 79.1 at the bottom of the page, at 1961, is the testimony of Mr. Moore as to his recollection of what the President told him as to why the White House had conducted an investigation of Donald Ellsberg. Paragraph 80.

Mr. DAVIS. Tab 80, on April 19, 1973, from 8:26 to 9:32 p.m., the President met with John Wilson and Frank Strickler, attorneys for H. R. Haldeman and John Ehrlichman. There was a discussion of the case against Haldeman and Ehrlichman.

The committee has requested the tape recording and other evidence of this conversation. The President has provided an edited transcript of that recording. A summary of that transcript has been prepared.

Mr. DOAR. Members of the committee, I would like to call your attention to another part of paragraph 79 that I overlooked. That is at

79.1 at 1982. Mr. Moore was testifying as to a conversation with the President on April 19. He says:

Well, when I came in to see him—

That is at the bottom of the page.

He had issued his April 17 statement that serious new charges had come to his attention, and so on. So when I came in I said, and he had said that they came to him March 21. I said, "Well, that was"—I paid him a compliment about the statement in terms of what the reactions I had heard and I said, "I note that March 21 date. I, John Dean, must have been the source of those charges," and he said something to the effect, "Oh, did you know about that," and I said, "Yes." I said "After we met with you the day before John and I talked about it," and I said, "I urged him to go in and tell you" and he said "in fact, he told me you called him that very night." He said "Yes, I did," and I said "Now the thing that got me committed was that blackmail business with Hunt, did he tell you about that?" He said, "Yes, yes, he mentioned that, that is what he said," and he said "Imagine," and again no quotation marks, please, I have to give you my recollection, and he said, I think, "Imagine" or "Just think of that," he said, "I told him it was not only wrong but stupid. That you can't do that. First of all the demands never stop" and he said, "Dean said this could go on," and the words "to a million dollars." The President said "That isn't the point. Money is not the point. You could raise money, money is not the point, it is wrong, we could not, should not consider it and it is stupid because the truth comes out anyway."

Mr. SEIBERLING. Mr. Chairman, that last quote he read, it isn't clear to me who is saying the quotes there.

Mr. DOAR. This is Mr. Moore's conversation with the President and he says "No quotes", but there are quotes there. He is recollecting a conversation he had with the President on the 19th.

Mr. SEIBERLING. Supposedly testifying what the President said to him?

Mr. DOAR. Yes, right.

Mr. SEIBERLING. I see, thank you.

Mr. DOAR. New volume, paragraph 81.

Mr. DAVIS. Volume 6, tab 81, between April 19 and April 26, 1973, the President had 11 conversations with Henry Petersen. Petersen has testified that during these conversations, the President asked Petersen for a detailed written report on the Watergate matter; discussed the advisability of retaining Haldeman and Ehrlichman at the White House; and discussed the progress of the grand jury investigation. Petersen has testified that sometime in the course of the April discussions the President made a flattering reference to Petersen as an adviser to the President and said he would have to serve as "White House counsel." The President also asked Petersen whether he would like to be FBI Director, but stated he was not offering him the job.

Mr. DOAR. In connection with this, I would like to ask the committee members to mark on the statement of information to examine Mr. Petersen's testimony with respect to the discussion between the President and Mr. Petersen about Gordon Strachan. It begins on page 22, the testimony about Gordon Strachan. This is tab 81.2. This is Mr. Petersen's testimony on February 5, 1974, which is at 81.2, where he relates to the grand jury the conversations that he had on the 15th and 16th and so forth with the President.

At page 21, he was asked this question: "I take it you never did have a substantive discussion about what it was that Hunt could reveal?"

The answer to that question was "No."

This relates to a question previously about whether the President ever indicated to Petersen what he felt the so-called Hunt blackmail to entail on the blackmail side rather than on the money side.

Then if you look on page 22, beginning at the middle of the page, these questions and answers:

Now, aside from a detailed written report, did you provide all information to him, from time to time, about the progress of the investigation or the possibility of —

Petersen answers:

From time to time, but it was very general, in the 2 weeks. For example, when he called about the immunity thing, he said, "Well, what else is new?" And I told him about the John Dean statement with respect to the Fielding break-in.

Then Petersen goes on:

On another occasion, I told him about the conflict between Strachan and Magruder and we were trying to resolve it and, if Strachan developed into a witness, then we would have a prima facie case against Haldeman.

But it was in the context of what I describe as ultimate rather than evidentiary fact.

Then there was a question:

Was there some discussion about the scheduling of witnesses before the grand jury?

Petersen answers:

Well, there was some discussion about the need for, you know—hurry up and get this over with.

Yes. We will make haste as reasonably as we can. But not specific witnesses, as I recall—who was coming in, when, you know.

Well, you know, I hesitate over that one. If I would tell him something about Strachan, he might say, "Well, you have got to get this tied down. You have got to do this." In that sort of context.

Then the question was put:

In substance, in discussing Mr. Strachan and his potentiality as a witness, did you advise the President that if Mr. Strachan came around and told the truth that he would probably be able to provide evidence of criminal activity, linking Mr. Haldeman to those crimes?

And he answered:

No question about that. I mean I made it pretty clear, "Well, you have a reservation about Dean. Okay, but then there is Magruder and, if Strachan comes through, Haldeman's dead." You know, that was —

Question. When do you recall that this took place?

Answer. I think this started around September—whatever that month was.

Question. April?

Answer. April 15.

Tab 82.

Mr. DAVIS. Tab 82, on April 20, 1973, Herbert Kalmbach was scheduled to testify before the Watergate grand jury. On the afternoon prior to his scheduled appearance, John Ehrlichman and Kalmbach had a telephone conversation, which was taped by Ehrlichman without Kalmbach's knowledge, during which they discussed Kalmbach's payment of funds to the Watergate defendants.

Mr. DOAR. Tab 83.

Mr. DAVIS. Tab 83, on April 22, 1973, Easter Sunday, the President telephoned John Dean from Key Biscayne, Fla. Dean has testified that the President called to wish him a happy holiday.

Mr. DOAR. Tab 84.

Mr. DAVIS. Tab 84, on April 25 and 26, 1973, Presidential Aide Stephen Bull delivered a number of tape recordings of Presidential conversations to H. R. Haldeman. At the President's request, Haldeman listened to the tape recording of the President's March 21, 1973, morning meeting with John Dean, made notes, and reported to the President.

Mr. DOAR. The material behind this tab sets forth an indication of how at that time, the White House records were maintained with respect to the access to the Presidential tapes. If you will look at 84.2, and this, in a sense, indicates the difference in the way the tapes were kept for the Oval Office and the Executive Office Building—you will see that, at the top of 84.2, that there was at least one new tape each day in the Oval Office and that if the tape ran out, then there was a second tape.

For example, on the 12th of March, there were two tapes, and then there was a tape for every day. The 18th was skipped. There was a tape for the 19th, two tapes for the 20th, a tape for the 21st and 22d.

On the other hand, at the Executive Office, the tapes ran for a number of days. This was a ring binder that purports to reflect the check-out of 22 tapes to Mr. Haldeman on the 25th and 26th of April 1973. You will see that on the 25th they were checked out at 1:45 p.m. and checked in at 5:28; on the 26th, they were checked out at 11 a.m. and checked in at 5:05 p.m. to Steve Bull.

Mr. WIGGINS. On what date was it that Mr. Butterfield made his disclosure over at the Senate committee?

Mr. DOAR. My recollection is July 17.

Mr. WIGGINS. Of 1973?

Mr. DOAR. Yes.

Mr. WIGGINS. After this event?

Mr. DOAR. Well, 3 months.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Item 23 is CD. What would that mean?

Mr. DOAR. Camp David.

Mr. HUNGATE. And item 14 is CR. What is that?

Mr. DOAR. Cabinet Room.

Mr. HUNGATE. And WHT?

Mr. DOAR. White House telephone.

Mr. OWENS. Did they have a taping system at Camp David?

Mr. JENNER. Yes, but not in all rooms.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Doar referred to the fact that these were checked out to Mr. Haldeman, but where does that appear? It says "to Steve Bull."

Mr. DOAR. The testimony is on 84.4, in the testimony that—and Mr. Haldeman's testimony on 84.3, he says:

My recollection is asking for the March 21 tape.

Question. What do you recall saying in substance?

Answer. Get me the tape for the President's meeting on March 21 with John Dean.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I was not clear. Did you say, Mr. Doar, that this same notation we are talking about indicates somewhere the number of tapes that were checked out before?

Mr. DOAR. Well, I think the notation here indicates that these tapes were checked out, these 22 tapes.

Mr. DEAN. Well, what shows the 22d?

Mr. DOAR. Well, the numbers down 1 through 22, on the left-hand column.

Mr. DENNIS. Oh, I see, all of these on this page were checked out to Haldeman on these particular dates?

Mr. DOAR. To Bull.

Mr. DENNIS. To Bull?

Mr. DOAR. Yes. And I am sure, Congressman Dennis, that Mr. Bull's testimony is that he checked out the 22 tapes.

Mr. DENNIS. OK.

Mr. FISH. Is not this the first time there has been any indication of a recording device at Camp David?

Mr. DOAR. No, there has been some question raised about it before.

Mr. FISH. I thought the testimony so far was that that was not recorded because there was a conversation at Camp David.

Mr. DOAR. I do not recollect that testimony in those positive terms.

Mr. FISH. Are either one of these telephone conversations then? Number 13 of the 22 that are listed here?

Mr. DOAR. Well, it could be a telephone conversation. I don't know whether that tape was wired to the phone and to a conference room too but my recollection is that there was one room at Camp David and a phone up there or two phones that were part of the taping system. It was in the study in the Aspen Lodge.

Mr. FISH. Thank you, Mr. Chairman.

Mr. DOAR. The Petersen conversation with respect to the Ellsberg break-in was made from Camp David. Is that right? Oh, it was not recorded because there was no system on a phone at Camp David.

Mr. FISH. Well, one further question then, if CD is Camp David, what is CR?

Mr. DOAR. Cabinet Room.

Mr. FISH. Thank you.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, just in response to the question that Mr. Fish asked you, at 1066 there is a notation that the President informed the committee that the telephone call from 6:28 to 6:37 p.m. was placed from Camp David. It was not recorded.

Mr. DOAR. That is the one that we referred to.

Mr. WALDIE. Is that the only one though, I gather from your response to Mr. Fish, that's the only one that was made from Camp David that we have been seeking that was reported as not having been recorded?

Mr. DOAR. I guess we'll have to check that for you. Mr. Davis says he thinks the answer is yes, that is the only one.

Mr. WALDIE. Have we had any Presidential conversations or any conversations other than phone conversations? Was the only record-

ing device at Camp David a telephone device? Were there other devices to record conversations at Camp David?

Mr. DOAR. My understanding was that the conversation could be recorded in one room. Whether that was just telephone conversations or all conversations I cannot tell you.

Mr. WALDIE. So at this point the only recorded conversation we have any reference to is this one telephone conversation?

Mr. DOAR. That was not recorded.

Mr. WALDIE. Yes.

Mr. HUNGATE. Mr. Chairman, was the recording equipment at Camp David attended to by the same technicians or different ones? Do you know?

Mr. DOAR. I do not know the answer to that.

The CHAIRMAN. Please proceed.

Mr. DOAR. Well, on 84.4 you see this is Mr. Bull's testimony. The pending question was:

Whether Mr. Haldeman gave you a list of tapes or spoke to you orally?

Answer. Mr. Haldeman in some way communicated the tapes that he wanted. However, I do not recall whether he gave it to me verbally and I wrote it down or he gave me a list.

Question. And then you spoke to Mr. Sims or Mr. Zumwalt?

Answer. Yes.

Question. And did you actually obtain the tapes requested?

Answer. Yes. I did speak to one of the two, and I did obtain the tapes.

Question. Did you furnish the tapes that you had obtained to Mr. Haldeman?

Answer. Yes, I did.

On the next page he is shown exhibit 7 in which he is asked:

Let me show you exhibit 7 that has been placed in evidence, which is a log maintained by the Secret Service that indicates certain tapes being checked out on the 25th of April and returned on the 25th of April, and others, or at least a notation that tapes were apparently checked out on the 26th of April and returned on the second of May. And let me ask you if that refreshes your recollection as to the obtaining of tapes and the returning of them.

And he says "No, sir, I have never seen this item before."

Tab 84.6 is Mr. Haldeman's testimony with respect to receiving these tapes and 84.7 is Mr. Haldeman's notes, detailed notes of the conversation on March 21 between the President and John Dean.

The numbers on the left-hand column I believe are the marks on the tape which will enable a person to get back and listen to the tape easily again. The lines on the side of the retyped notes are lines that were on the side of Mr. Haldeman's notes. These were not made by your staff.

Then on paragraph 84.8 Mr. Zumwalt testifies about turning over the tapes to Mr. Bull. Tab. 85.

Mr. DAVIS. Tab 85, on April 26, 1973, Senator Lowell Weicker, a member of the Senate select committee, released to the press information that Patrick Gray had burned political sensitive files which had been given to him by John Dean from Howard Hunt's White House safe. Petersen had testified that on this date the President telephoned him to ask if Gray ought to resign as Acting FBI Director, and that Petersen told the President that he thought Gray's position was untenable. At the President's instruction, Petersen, Gray, and Kleindienst met that evening and discussed Gray's possible resignation. Kleindienst telephoned the President and recommended that Gray step down, but added that Gray did not see it that way. The President told

Kleindienst that he would not require Gray to resign immediately. Gray has testified that Kleindienst also stated after speaking to the President there must be no implication that in burning these files there was any attempt of a cover-up at the White House.

Mr. DOAR. Tab 86.

Mr. DAVIS. Tab 86, on April 26, 1973, Jeb Magruder resigned his post as Director of Policy Development for the Department of Commerce.

Mr. DOAR. Tab 87.

Mr. DAVIS. Tab 87, on the afternoon of April 27, 1973, Patrick Gray notified Lawrence Higby that he was resigning as Acting Director of the FBI. From 4:31 to 4:35 p.m. on April 27 the President had a telephone conversation with Petersen during which the President asked if Petersen had any information that would reflect on the President. Petersen said no. At the President's request, Petersen met with the President from 5:37 to 5:43 p.m. and from 6:04 to 6:48 p.m. The President again asked if there was adverse information about the President.

Petersen said he was sure that the prosecutors did not have that type of information.

The committee has requested the tape recordings and other evidence of various Presidential conversations on the afternoon and evening of April 27, 1973. The President has produced edited transcripts of the conversations between the President and Petersen from 5:37 to 5:43 p.m. and among the President, Petersen, and Ronald Ziegler from 6:04 to 6:48 p.m. Summaries of the transcripts have been prepared.

Mr. DOAR. Members of the committee, these requests were requests that we had submitted to Mr. St. Clair. They were not subpoenaed but they were among the eight or nine additional items that the President furnished to the committee in addition to the specific items that were subpoenaed. Ms. Jordan asked me earlier if we had subpoenaed the conversation with Mr. Rogers. We had not but that was included as part of the conversation with Mr. Ehrlichman and Mr. Haldeman on the afternoon of the 17th. Tab 88.

Mr. DAVIS. Tab 88, on or about April 28, 1973, H. R. Haldeman and John Ehrlichman determined that they should resign from their positions on the White House staff. Haldeman and Ehrlichman have testified that the President did not request their resignations.

Mr. DOAR. Tab 89.

Mr. DAVIS. Tab 89, on April 29, 1973, the President met with Attorney General Richard Kleindienst at Camp David. They discussed Kleindienst's resignation as Attorney General. The President asked Kleindienst if he could announce Kleindienst's resignation in his statement the next day and Kleindienst consented. Also on that date the President met with Elliot Richardson at Camp David and informed him of his intention to nominate Richardson to be Attorney General. The President told Richardson that he would commit to Richardson's determination whether any special prosecutor was needed.

Mr. DOAR. Tab number 90.

Mr. DAVIS. Tab 90, on April 20, 1973, the President made a nationwide televised address on the Watergate matter. He announced the resignations of Haldeman, John Ehrlichman, Richard Kleindienst

and John Dean and the appointment of Elliot Richardson as Attorney General of the United States.

Mr. DOAR. If the members of the committee could refer back again to tab number 84, I would just ask you to make a note to the effect that we will present to you later in a subsequent part of the presentation that the President listened to tapes on June 4, 1973, and that we have a recording of the entire conversation or the entire listening, although much of it is inaudible. But, for 6 hours on the 4th of June 1973, the President listened to a number of recorded conversations. We will present that when we reach June 4.

That is all we have for this day, Mr. Chairman.

Mr. OWENS. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. OWENS.

Mr. OWENS. I wonder if Mr. Doar could outline for us subsequently how he intends to handle subsequent presentations of evidence, when, on Watergate and when and in what fashion? Do you have any idea at this point?

Mr. DOAR. Yes. The next hearing date the staff will present to the committee information on ITT, and following that we will present information on the matter involving the price-support increase for the dairy industry in 1970 and 1971. Following that there will be matters presented to the committee on the allegations involving White House wiretapping in 1969 and 1970. The activities of the so-called Special Investigative Unit or the Plumbers, other allegations involving domestic surveillance and intelligence by the White House and certain matters involving Judge Byrne and the Ellsberg trial. And then there will be some materials presented to the committee on the relationship between the White House and the IRS. Following that we will come back to the presentation of the period following April 30 with respect to the period that the Special Prosecutors have been engaged in in their activities and investigation of these matters including matters not just Watergate but the Plumbers and some other matters that we will cover for you first.

The reason why we are picking up those first is that the Special Prosecutor activity relates to all of those areas.

Mr. OWENS. The June 20 tape is available to be heard? You didn't play it to the committee but it is available for the committee members to hear from June 20, 1972?

Mr. DOAR. We played that tape. It is the June 4 tape you asked about?

Mr. OWENS. Well, we didn't play the tape of the 18½-minute gap?

Mr. DOAR. No, and we don't have that tape.

Mr. OWENS. We don't have that?

Mr. DOAR. No, we don't have that tape.

Mr. OWENS. The Special Prosecutor has it obviously.

Mr. DOAR. The court has it too.

Mr. JENNER. Judge Sirica has it.

Mr. OWENS. Don't we intend to get that?

Mr. DOAR. They have the buzz.

Mr. OWENS. We have the buzz?

Mr. DOAR. We don't have the buzz. They have the tape that has the buzz on it.

Mr. OWENS. Are we going to get a copy of that here? Is there anything but a buzz on it?

Mr. DOAR. Well, I have not listened to it. What we are going to get on this Friday is the report of the six experts who have studied this and they are going to file the report on Friday.

And we will present that in connection——

Mr. OWENS. That includes other recordings, too, the report on other recordings?

Mr. DOAR. I don't believe it does. I believe they are still investigating the others.

Mr. OWENS. Those dictabelts and so forth?

Mr. DOAR. Yes.

Mr. OWENS. That is still forthcoming?

Mr. DOAR. Yes, it is.

Mr. OWENS. You will get a copy of this tape though, the 18½ minute?

Mr. DOAR. We will make a copy of the tape; yes.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McCloery.

Mr. McCLODY. I would like to make an inquiry about the meeting that we are having tomorrow and possibly on Friday. I wonder if the members of the committee are going to be handed in advance a proposed draft of the letter which you might send, Mr. Chairman? I would also like to know whether we will have a draft or the specifics of the proposed additional subpoenas which the committee will be asked to authorize?

Mr. DOAR. With respect to the latter question, Mr. Chairman, we will deliver to the committee members offices tonight, with your permission, the justification of the list of materials that we would like to subpoena. We probably will not be able to do that until sometime after supper, but they will be available for the committee members at their offices first thing in the morning.

Mr. McCLODY. And with regard——

The CHAIRMAN. With respect to the letter, I might say that the letter is still in the process of being drafted. But, I would hope that we would be able to provide the members with a copy of the proposed draft of such a letter early in the morning, 9 o'clock in the morning.

Mr. McCLODY. What time is the meeting?

The CHAIRMAN. The meeting is not until 10 o'clock.

Mr. McCLODY. I think if we could have these in our offices by 9 in the morning it would help us prepare for the meeting at 10.

Thank you, Mr. Chairman.

The CHAIRMAN. I would like to, before we depart from the previous subject that Mr. Owens inquired about, and that is the scheduling, Mr. Doar, I would suggest that you prepare in chronological form, so that we could see, virtually see what is going to develop, the various areas of presentation such as you outlined so that I think the members may be in a position to at least forecast what is going to take place and maybe there might be some aids that they might utilize so that it just wouldn't come just totally strange to them on that day. I think we ought to have that at least a week in advance.

Mr. DOAR. All right. We will do that.

Mr. SEIBERLING. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. What subject matter are the subpoenas we are going to take up tomorrow on?

Mr. DOAR. Just the material on Watergate that we have been through with the committee between the first of July 1972 and April 30, 1973.

Mr. DEAN. Additional subpoenas regarding additional Watergate matters?

Mr. DOAR. Yes, sir.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. I wonder if counsel could advise us as to what witnesses he would recommend to the committee to be called for development, further development of the Watergate area?

Mr. DOAR. Well, I am not ready to do that yet, Mr. Butler.

Mr. BUTLER. Well, is it your plan to make a recommendation to the committee or are you going to wait and see what the committee has to say on that?

I just want to be sure we are moving along on all fronts here and I would like to think that we were preparing ourselves for that aspect of it. And I am not sure that we couldn't pursue some of them by depositions prior to a committee hearing and I would just like to know if consideration has been given to that phase of it?

The CHAIRMAN. I might state for the gentleman that we are going to make a request for a recommendation of that sort from the counsel, and then that is a matter, however, that the committee will have to make a determination on.

Mr. BUTLER. Well, Mr. Chairman, in the interest of speeding things along would the counsel review its thinking with reference to depositions, and extra-committee investigation of these areas? I just anticipate that it would be so time consuming if we are going to parade all these witnesses before the committee and it may be that the staff could pursue them and I thought that was what we were going to do initially and then we abandoned it. And I would like to urge counsel to reconsider its thinking in that regard.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, do I understand that tape that is missing, not the missing tape but where the machine ran out, the tape on the 15th, I think, of April, does the portion that was recorded, is that portion in Judge Sirica's possession?

Mr. DOAR. No.

Mr. WALDIE. No one has ever heard that then except the White House?

Mr. DOAR. Not to my knowledge.

Mr. WALDIE. We have sought to subpoena that, have we? I mean we have requested it?

Mr. DOAR. No, we subpoenaed it.

Mr. WALDIE. We subpoenaed it?

Mr. DOAR. We subpoenaed it and the response was—just let me read it to you. The response to item 31 of the subpoena was that recorded

portion of conversation supplied, tape ran out during meeting with Kleindienst, nothing further was recorded in EOB office on April 15. And then for subsequent conversations on that day, subsequent conversations in time, the response was to see that item, item 31, as a reference.

Mr. WALDIE. Well, then, I don't want to prolong it but do I understand that the grand jury did not seek even the portion of the conversation that was, in fact, recorded? Is that right?

Mr. DOAR. That is correct.

Mr. WALDIE. We are the only ones who have sought that thus far? The Special Prosecutor has not?

Mr. DOAR. I don't know whether the Special Prosecutor sought some additional recordings but it is an in-camera hearing and I don't know what ones they have sought.

Mr. WALDIE. I see. Thank you.

Mr. EDWARDS. Mr. Doar, how does the Secret Service know when the tape runs out? Is there some mechanism that rings a bell or something?

Mr. DOAR. No, there is not. As I understand it, the system is voice activated. And there are two machines that operate sequentially.

They operate on a time, a 6-hour or 12-hour switchover. One machine will record from 12 to 6 o'clock, and then from 6 to 12 the other machine. Now if a tape runs out between 6 and 12 o'clock there is no signal as I understand it, to indicate that the machine is no longer recording.

The tape just spins in its socket there, and then the tape doesn't start recording until 12 o'clock when the other tape recorder flips on by an automatic mechanism.

Mr. EDWARDS. Didn't the Secret Service have some sort of a schedule of inspecting the tapes so that they could renew them?

Mr. DOAR. They had a system in the Oval Office that every morning a new tape was installed regardless of how much of the tape was used.

They did not have that system as far as I can tell, for the Executive Office Building. So, the day that this occurred was a Sunday and there were these long conversations in the Executive Office Building on Saturday, as you have seen from this book.

Mr. SEIBERLING. Well, how does it happen in that log of the tapes that we saw that there were some tapes where they had run for 5 days, and others they had two tapes in 1 day?

Mr. DOAR. Well, I think that was because the tapes at the Executive Office Building or the Cabinet Room were not replaced every day. The only place that the tapes were replaced every day was in the Oval Office.

Mr. SEIBERLING. Yet in some cases they put in two tapes in 1 day.

Mr. DOAR. Well, I think that they had two machines in the Oval Office and if they ran out on one it would kick into the other. There was enough to take care of over 6 hours of conversation in any one day at the Oval Office. I am not positive of how that system worked though. I will have to check that.

Mr. SEIBERLING. Mr. Chairman, are we finished with the Watergate presentation?

Mr. DOAR. Well, there are some matters, additional matters, that we may want to present to you in reviewing this that have come to our attention. But, we are not finished with the period following April 30.

Mr. SEIBERLING. But April 30 is the practical cutoff and after April 30 we move into a different phase?

Mr. DOAR. Yes, because then, shortly thereafter, a special prosecutor was appointed and he took over the investigation.

Mr. SEIBERLING. At that point, then, we are examining the activities with respect to the Special Prosecutor's investigation?

Mr. DOAR. Yes. Yes. There are, however, some materials in the period, subsequent to April 30, that are relevant to it, directly to a continuation of the Presidential conduct. For example—

Mr. SEIBERLING. You don't plan to submit them to us until you get to that in connection with the Special Prosecutor?

Mr. DOAR. That was our idea.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, at some point the committee is going to have to start giving meaning to this great mass of information. It perhaps is too early to do so at this moment but at some point it is an inevitable chore which we are going to have to confront. It would be very helpful in doing that if the staff would give some consideration at the appropriate time to reporting to the committee theories of the case on which an impeachment might be based. And I would not expect you to be an advocate at all at that point but merely to reveal several theories which might be supported by the evidence upon which an impeachment could be based. Now, that would help me, Mr. Chairman, and I am sure would help all of the members enormously in going back over all of this material and relating it to some theory. Absent such a theory before us, we're really in the dark in reviewing all of this evidence. And I hope that the chairman will consider this as an earnest suggestion and recommendation to the staff to present such a catalog, laundry list of theories, at some early date.

The CHAIRMAN. I will be glad to pursue that further with the gentleman and see whether or not this cannot be done. But, as an aid to the committee, Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, with respect again to the April 15 tape that supposedly ran out, has anybody testified under oath with respect to that tape having run out?

Mr. DOAR. I don't know for sure. I believe so. Yes; I believe there has been testimony about that.

Ms. HOLTZMAN. The reason I asked that is it seems to me that there is certainly a question in my mind and there seems to be questions in other members' minds as to the information we have on which we can accept that judgment that the tape ran out. And perhaps we can be presented with some more information about that. It would be very helpful.

Mr. DOAR. We will do that.

Ms. HOLTZMAN. I also have a brief question about the examination of the experts on those other tapes and the missing gaps. Is there any indication that the experts will finish that report before we finish our investigation?

Mr. DOAR. Well, I am trying to find that out, Ms. Holtzman and I cannot report that to you now. But, I think I may be able to have something for you the first of the week on this when we get the first report.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, just as one member, as we have gone through this rather bulky, I think well-assembled quantity of material, it becomes apparent that there are some ambiguities as has previously been suggested. And it seems to me that for instance in respect to the March 21 tape that it is almost essential that we consider calling live witnesses to really pursue the Presidential statement and sequence of events from that point on. I think you have done a good job with what you have but it seems to me we ought to undertake a searching examination, possibly a cross-examination and be able to really pin exactly what the full truthful sequence of events was involving the President, involving Haldeman, LaRue, everybody involved. I hope you do give some—

Mr. DENNIS. Would the gentleman yield?

Mr. RAILSBACK. I will be glad to yield.

Mr. DENNIS. I would like to subscribe to what the gentleman is saying, that matter which I brought up previously which was quite directly at the time out of order and is now on the agenda as I understand it.

And I expect to address myself to that point that you are addressing yourself to either tomorrow or the next day. So, I concur with the gentleman.

Mr. RAILSBACK. Let me, if I could—

The CHAIRMAN. The Chair would like to announce that there is a rollcall vote.

It is the final passage on the Community Services Act.

We will adjourn to meet at 10 o'clock. We will recess to meet at a time which will be stated by the Chair.

Just a moment, please. I understand that there are a number of Members here from California who are concerned, and Mr. Wiggins raised the question, as to whether or not since there is a primary in California on Tuesday next and there are a number of Members here from California, whether or not we should be meeting on Tuesday. Now, I know that—

Mr. HUNGATE. Mr. Chairman, could I join in that the evidence hearings begin in the Senate that day if I could add another reason for not meeting.

The CHAIRMAN. Do I hear anything from the gentlemen from California?

Mr. Waldie, you are from California.

Mr. WALDIE. To be perfectly frank with you, Mr. Chairman, I do not think that we ought to adjourn for any primary for any State including ours.

I think that we are so damn far behind on this committee that we ought not to adjourn. We ought to stay in session.

The CHAIRMAN. We will recess to meet on Tuesday next. Tomorrow we have a regular business meeting.

[Whereupon, at 4:17 p.m. the committee was recessed to reconvene on Thursday, May 30, 1974.]

IMPEACHMENT INQUIRY

Business Meeting

THURSDAY, MAY 30, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met pursuant to notice, at 10:30 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

We have called a business meeting of the committee today since after 5 days of executive session in which the committee has heard a presentation of matters relating to the question of President Nixon's involvement in Watergate and its aftermath, we have certain matters before us now that the committee must resolve. We will meet today for as long as the Chair feels the committee will have to meet in order to resolve these questions, and if not, the committee will recess its meeting until tomorrow morning at 10:30 in order to complete the agenda that we have, which is a rather long agenda. We will thereafter resume our inquiry with hearings on consideration of evidentiary material on Tuesday next at 10 o'clock. Further hearings will be held on Tuesday, Wednesday, and Thursday of next week. These hearings, whether they will be open or closed, will depend upon the action taken by the committee today on a proposal which will be offered by Mr. Wayne Owens.

I now recognize the gentleman from Alabama, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

As other members of the committee have been, I have been deeply troubled by what response, if any, to make to the President's refusal to comply with our latest subpoenas. I know that some would like to go farther than I propose that we do and some would perhaps like

to do less or nothing. I believe what I propose, and copies of the letter I propose are at everybody's desk. I believe it a reasonable response to what I feel is an unreasonable response of the White House. If you will permit me, Mr. Chairman, I would like to preface my motion by a very few brief remarks.

The rule of law has always been the distinguishing characteristic of our democratic tradition. A free society can tolerate divergent opinions and the free expression of wide ranging ideas, but it must always demand adherence to its basic constitutional precepts. That is why the President's open and continued defiance of the Judiciary Committee's subpoenas is, to me, anyway, such a disturbing matter. By the President's own words, the subpoenas, as both a factual and a legal matter, have not been and will not be complied with.

Now, this committee is moving forward thoroughly, expeditiously, and above all, fairly. I for one think it will be good when the American people can come into our sessions through the eyes and ears of the news media. I believe that this process that we are undergoing serves to affirm the strength of our system and the manner in which this process is going forward gives me confidence in the future, whatever the outcome of our deliberations might be.

I say this committee is moving forward fairly and I mean in every respect, including the issuance of subpoenas. The various requests and subpoenas to date are for material both necessary and relevant to our ultimate resolution of issue before us. It does not serve this President or the Office of the Presidency to refuse to comply, in my judgment.

There is neither rational nor legal basis upon which the President can rest his refusal to meet the obligations raised by our subpoenas and the truly regrettable aspect of these refusals is that the committee is seeking only to give the President a chance to come forward with material shedding light on the truth.

You know, the truth cuts both ways, as many members have said, and gotten different impressions from the material that we have had to date. Some of it has been very damaging to the President. Some of it has tended to explain or help his position.

So I view these requests and subpoenas that we have sent out as an opportunity for the President, not as a challenge or confrontation. Under the Constitution, it is not within the power of the President to conduct an inquiry into his own impeachment, to decide on his own initiative which evidence or which version or which portion of that evidence is necessary and relevant to the conduct of such an inquiry. These are matters which the Constitution explicitly has given the House the sole power to decide.

The American people can know that this committee and this House will go forward and will meet its responsibilities. In the firm hope that the President will do likewise, Mr. Chairman, I therefore move that you be authorized and directed to send to the President on behalf of the committee the following letter which I will read and which each member has at his house and the clerk has a copy as well, addressed to the President, the White House, Washington, D.C.:

Dear Mr. President: The Committee on the Judiciary has directed me to reply to your letter of May 22 in which you decline to produce the tapes of Presidential conversations and Presidential daily diaries called for in the committee's subpoenas served on you on May 15, 1974. You also decline to produce any other material dealing with Watergate that may be called for in any further subpoenas that may be issued by the committee.

The Committee on the Judiciary regards your refusal to comply with its lawful subpoenas as a grave matter. The committee can see no rational or legal basis on which the President could have denied to the committee access to the materials requested. The committee fails to see how the Presidency could be fatally compromised by your compliance with your constitutional obligation in an impeachment inquiry. Under the Constitution, it is not within the power of the President to conduct an inquiry into his own impeachment, to determine which evidence and what version of portion of that evidence is relevant and necessary to such an inquiry. These are matters which, under the Constitution, only the House has the sole power to determine.

The decision to authorize our subpoenas of May 15 was made only after the committee had carefully considered detailed evidentiary materials justifying the necessity of the materials justified in the subpoenas. The overwhelming majority of the committee members determined that the material which we subpoenaed was necessary to the committee's constitutional inquiry. The committee is going forward with its inquiry. Before our inquiry is concluded, we hope that you will reconsider your obligations.

After the committee has heard all the available evidence, committee members will weigh any refusal on your part to comply with its subpoenas and any further subpoenas the committee may decide are necessary. In meeting their constitutional responsibility, committee members will be free to consider whether your refusals require the drawing of unfavorable inference concerning the substance of the material, whether your refusals in and of themselves might give rise to inferences adverse to you, including whether your refusals constitute a ground for impeachment.

The committee's decision on these matters will be contained in the recommendation the committee will make to the House of Representatives.

Mr. Chairman, I move that you be authorized and directed to send such a letter forthwith to the President of the United States.

Thank you, Mr. Chairman.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. Mr. Chairman, by a vote of 37 to 1 this committee voted to subpoena evidence of certain Presidential conversations that it believed to be both necessary and relevant to discharging the solemn responsibility conferred upon it by the House and by the Constitution.

We acted only out of duty—not to strengthen or weaken the Office of the Presidency. We acted to expedite the resolution of our inquiry—not to delay it. We acted ultimately to restore confidence in the office—not to destroy confidentiality.

In response, the President has not said that the subpoenaed materials do not exist. He has not said that the materials are not necessary to discharging our solemn constitutional responsibility. He has not said that the materials are not relevant to an impeachable offense. He has not denied our duty and our power to subpoena. Rather he has simply denied that a President is obligated to obey the lawful commands of this committee, rooted as they are in the Constitution.

Last fall we may recall that when the President was asked to answer in court, he suggested through counsel that he was answerable only to the Congress in an impeachment proceeding.

This member, for one, views the President's present refusals to produce evidence with dismay. In our deliberations we are reviewing allegations that the President obstructed the inquiry of the Department of Justice, the Senate select committee, and the Special Prosecutor. His current conduct does not make it easier for this member to conclude that such allegations are without merit.

However, I do not view the President's refusal as an irreparable wrong. There is still time for the President to sweep away adverse in-

ferences and innuendoes with the hard evidence we have ordered him to produce. Although the President's response gave little reason to believe that he will provide subpoenaed materials while that opportunity exists, and before we have received all the evidence and testimony, I am not prepared to draw any adverse inferences. I, for one, find it difficult to draw inferences today with regard to conclusions that we all are supposed to formulate—one way or the other—some time in the future when all the evidence and testimony has been received.

Therefore, Mr. Chairman, I would support sending the President a letter expressing the displeasure and disappointment in the President's continued lack of cooperation, and advising him that his conduct would permit members of the committee, in reviewing the totality of the evidence, to draw reasonable and natural inferences adverse to the President.

Mr. Chairman, I have seen a draft of the letter and I have made suggestions to you, Mr. Chairman, in advance of the letter being presented here this morning, and it occurs to me that this is a reasonable expression of this committee at this time with respect to the President's continued refusal to supply the materials that we requested by subpoena and by letter.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Cohen.

Mr. COHEN. I would like to address a question to Mr. Flowers.

On the first page of your letter, are you suggesting that the words "rational or legal basis"—are they synonymous, in your opinion, Mr. Flowers?

Mr. FLOWERS. Will the gentleman yield?

Mr. COHEN. Yes.

Mr. FLOWERS. I do not view them as synonymous. I think each has a separate meaning. They are stated together in the letter.

Mr. COHEN. Would the gentleman have any objection to deleting the word "rational" for whatever implications that might give rise to?

Mr. FLOWERS. Honestly, Mr. Cohen, I do not think there is any intention of the implication that perhaps you have some fear of there. I do not believe it is there. It certainly was not the idea of the motion-maker, anyway, to go beyond what it says there.

I would—perhaps another word might do better. How about "reasonable" or something like that? I have no fault with that. I would kind of like to have something in there to balance off "legal," too, because I believe I was trying to say and we are trying to say something besides no legal basis.

Mr. COHEN. Would the gentleman accept the word "reasonable" as an alternative?

Mr. FLOWERS. As far as I am concerned, I would.

Mr. COHEN. At a later time, Mr. Chairman, I would make such a motion.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. I have no disagreement with anything said by Mr. Flowers or by Mr. McClory, but I do think that the letter is too long and should be shortened. I have a substitute on the desk. I think that

it is more explicit and would be a better letter and I move my amendment and ask that it be read.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Would the clerk read the letter of the gentleman from California?

The CLERK [reading]:

The President, the White House, Washington, D.C.

Dear Mr. President. The Committee on the Judiciary has authorized me to reply to your letter of May 22 in which you decline to produce the tapes of Presidential conversations and Presidential diaries called for in the committee's subpoenas served on you on May 15, 1974. You also decline to produce any other material dealing with Watergate that may be called for in any further subpoenas that may be issued by the committee.

The Committee on the Judiciary regards your refusal to comply with its lawful subpoenas as a grave matter. Under the Constitution it is not within the power of the President to conduct an inquiry into his own impeachment, to determine which evidence, and what version or portion of that evidence, is relevant and necessary to such an inquiry. These are matters which, under the Constitution, only the House has the sole power to determine.

In meeting their constitutional responsibility, committee members will be obliged to consider whether your refusals require the drawing of negative inference concerning the substance of the materials, and whether your refusals in and of themselves might constitute a ground for impeachment.

The committee's decisions on these matters will be contained in the recommendation the committee will make to the House of Representatives.

The CHAIRMAN. Is the gentleman offering his letter as a substitute to the Flowers' letter?

Mr. EDWARDS. That is correct, Mr. Chairman, and I do not want to unnecessarily prolong this, but I think there is widespread support on both sides.

Mr. HOGAN. Will the gentleman yield?

Mr. EDWARDS. Yes, I yield to the gentleman from Maryland.

Mr. HOGAN. I think the alternative offered by the gentleman from California is far superior to the one offered by my good friend from Alabama. But I wonder if the gentleman from California would accept an amendment to the third paragraph, second line, deleting the word "oblige" to replace it with the word "free" and the last word in that same line, delete the word "require" and insert the word "warrant" so the sentence would read: "In meeting their constitutional responsibility, committee members will be free to consider whether your refusals warrant the drawing of negative inference," and so forth.

Mr. EDWARDS. I would accept it, subject to the approval, of course, of the original author of the paragraph, Mr. Flowers.

Mr. McCLORY. Will the gentleman from California yield to me at this point?

Mr. EDWARDS. Mr. Chairman, I yield back my time.

Mr. McCLORY. I would just like to say that an earlier draft of the letter had the word "oblige" and I suggested to the chairman that he revise that to indicate that the members would be free to draw these inferences and I offered the suggestion of using the word "free" instead of obligating the members to do anything. So if you would accept that amendment, it would be consistent with our minority input in this draft letter.

Mr. EDWARDS. Yes, I would.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, a parliamentary inquiry.

Am I correct that if we should pass this letter without offering any substitutes for it that there will be, we will be protected as far as introducing other motions relating to the same subject matter?

The CHAIRMAN. The gentleman will be protected. The motion that the gentleman intends to make with regard to the proposal concerning bringing this matter up under a legislative procedure is something that will be in order and is on the agenda.

Mr. CONYERS. A parliamentary inquiry, Mr. Chairman.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I would suggest amendment about the amicus curiae brief.

Mr. CONYERS. A parliamentary inquiry, Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I have a motion that I would like to have considered as a substitute motion, since I am, unfortunately, not in support of either of the letters, at the proper time.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. A parliamentary inquiry.

Will the action on this letter preclude a later motion on the subject of contempt?

The CHAIRMAN. No, that will not preclude action on contempt.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. May I be recognized to offer an amendment to the amendment offered by the gentleman from California?

The CHAIRMAN. I understand the gentleman accepted both words.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. May I address Mr. Flowers, the original proponent of the motion?

Mr. FLOWERS. I commend my friend from California for shortening the language. I think that it is wise in all respects to do that, to save the Public Printer, anyway. It suits me fine. I would be willing to accept his substitute.

Mr. McCLORY. If the gentleman from Alabama would yield, I would like to say I support the shortened letter. I commend the gentleman from California for offering his substitute, as well as Mr. Hogan for his amendment to the substitute.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Mr. Chairman, I drew your attention to the third line of the third paragraph of the Edwards' substitute. I wonder whether or not the participle should be inserted before the word "negative" so it reads "refusals warrant the drawing of a negative inference" or in the alternative, say "negative inferences." It seems to me there is something missing there.

The CHAIRMAN. Is the gentleman from New York addressing Mr. Edwards of California?

Mr. FISH. Yes, I am, Mr. Chairman.

Mr. EDWARDS. I believe that the word should be in the plural. I thank the gentleman from New York.

Mr. FISH. "Inferences." I thank the gentleman from California.

Mr. DANIELSON. Would the gentleman, Mr. Edwards, consider at that same point, in the third paragraph, substituting in place of the word "negative" the word "adverse," since that is what we are actually talking about? Instead of a negative inference, which means nothing, an adverse inference, which means something. I would like to suggest that the gentleman consider it subject to using the word "adverse" for "negative"?

I would like, if I may, Mr. Chairman, if not at this time, at the appropriate time, I will offer an amendment to this substitute to substitute the word "adverse" for "negative."

Mr. EDWARDS. Mr. Chairman, I see nothing wrong with that. I thank Mr. Danielson. I would accept that.

Mr. CONYERS. Mr. Chairman.

The CHAIRMAN. The Chair would like to state at this point that we are going to have to inquire of the clerk whether or not he is following this so that we have the language and the various offers of change which have not been offered in the way of amendments, but have been accepted by the original proponent of the motion.

Mr. CONYERS. Parliamentary inquiry, Mr. Chairman.

We are still on the item 1 of the agenda of the response to the subpenas. I would like to—

The CHAIRMAN. Would the gentleman state his substitute motion before he is recognized on it, because I believe the gentleman's motion, if I understand it from the resolution he has offered, is separate and apart from the item that we are now considering. It is not germane to the item we are considering.

Mr. CONYERS. Then my move—I withdraw it.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman, I would like to commend the gentleman from California, Mr. Edwards, for offering his substitute, because I was prepared to ask the gentleman from Alabama about the last sentence on page 1 of his proposed language, which reads "The committee fails to see how the Presidency could be fatally compromised by your compliance with your constitutional obligation in an impeachment inquiry."

Having read the Constitution, as I am sure the gentleman from Alabama has done likewise, I have not found any place where it places a constitutional responsibility on the President in any impeachment inquiry. The Constitution places the responsibility on the House and the Senate.

The CHAIRMAN. As the gentleman has already stated—

Mr. LATTA. I commend the gentleman from California for leaving out that sentence.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman.

I have a question for counsel.

Counsel, would you please advise the member of the committee what the legal effect of the letter will be? Either letter?

Mr. DOAR. In my opinion, Congressman, the legal effect of this letter will be to put the President of the United States on notice that he has—that the committee has concluded that he has disobeyed this subpoena.

Mr. WIGGINS. Does that have some legal impact?

Mr. DOAR. I think that it has a legal impact in that when the committee reaches the point where it would consider whether or not the action of the President warrants the drawing of adverse inferences or warrants the finding that the disobedience to the subpoena or the subpoenas is an impeachable offense, I think that the fact that this committee has formally notified the President does have factual or legal significance.

Mr. WIGGINS. Is it your view that inferences would not be permissible absent notice to the President?

Mr. DOAR. No, it is not my view that inferences would not be permitted, but I think that in a situation such as this, it is proper and appropriate that the President be advised formally of the decision of the committee at the earliest possible date.

Mr. WIGGINS. All right.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Mr. Chairman, I would like to suggest an amendment to the gentleman from California. The last sentence of the second paragraph in his letter that reads: "These are matters which, under the Constitution, only the House has the sole power to determine." I would suggest as an amendment to that that the sentence read, "under the Constitution, the House has the sole power to conduct an inquiry into impeachment," which follows from the first sentence in that paragraph, which says—or the second sentence—"Under the Constitution, it is not within the power of the President to conduct an inquiry into his own impeachment." My suggested amendment follows that original statement of fact.

Furthermore, it does not run the possibility of compromising what some of us believe may be an ultimate necessity, and that is for the courts or the Supreme Court to say whether in fact, the President must furnish some materials according to our subpoena.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Most respectfully, I think the sentence is appropriate as it is insofar as I am concerned, but I yield to Mr. Flowers.

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. It is all right with you—is that what you are saying, Mr. Edwards?

Mr. EDWARDS. In my view, I do not think that the amendment is appropriate.

Mr. FLOWERS. I would agree with you. I would not accept the amendment if I am still in the position of—

The CHAIRMAN. The Chair would like to state that the parliamentary situation is such that there is a substitute to the motion of the gentleman from Alabama and the question would be on the substitute

offered by the gentleman from Alabama as amended. All those in favor—

Mr. SMITH. Mr. Chairman, I move my amendment as a perfecting amendment to the substitute.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York.

The question has already been put on the amendment offered by the gentleman from New York to the substitute motion as amended. All those in favor of adopting the amendment offered by the gentleman from New York to the substitute as amended, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[Chorus of "noes".]

The CHAIRMAN. The noes appear to have it.

Mr. SMITH. A rollcall, Mr. Chairman.

The CHAIRMAN. A call of the roll is ordered. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.
 The CLERK. Mr. Owens.
 Mr. OWENS. No.
 The CLERK. Mr. Mezvinsky.
 Mr. MEZVINSKY. No.
 The CLERK. Mr. Hutchinson.
 [No response.]

The CLERK. Mr. McClory.
 Mr. McCLORY. Aye.
 The CLERK. Mr. Smith.
 Mr. SMITH. Aye.
 The CLERK. Mr. Sandman.
 Mr. SANDMAN. Aye.
 The CLERK. Mr. Railsback.
 Mr. RAILSBACK. Aye.
 The CLERK. Mr. Wiggins.
 Mr. WIGGINS. Aye.
 The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.
 The CLERK. Mr. Fish.
 Mr. FISH. No.
 The CLERK. Mr. Mayne.
 Mr. MAYNE. Aye.
 The CLERK. Mr. Hogan.
 Mr. HOGAN. Aye.
 The CLERK. Mr. Butler.
 Mr. BUTLER. No.

The CLERK. Mr. Cohen.
 Mr. COHEN. No.
 The CLERK. Mr. Lott.
 Mr. LOTT. Aye.
 The CLERK. Mr. Froehlich.
 Mr. FROEHLICH. Aye.
 The CLERK. Mr. Moorhead.
 Mr. MOORHEAD. Aye.
 The CLERK. Mr. Maraziti.
 Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.
 Mr. LATTA. Aye.
 The CLERK. Mr. Rodino.
 The CHAIRMAN. No.

The CHAIRMAN. The clerk will report the vote.
 Mr. CLINE. Fourteen members have voted aye; 23 no.
 The CHAIRMAN. The amendment is not agreed to.

The question is on the substitute of the gentleman from California as amended. All those in favor—a rollcall is demanded.

The gentleman withdraws his request for a rollcall.

All those in favor of adopting the substitute offered by the gentleman from California as amended, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

VOICE. No.

The CHAIRMAN. The ayes have it.

The question now occurs on the adoption of the motion of the gentleman from Alabama.

Mr. SARBANES. Mr. Chairman, may we have a rollcall.

The CHAIRMAN. The gentleman asks for a rollcall.

Mr. DENNIS. Mr. Chairman, parliamentary inquiry.

Might a member be heard briefly on the motion before we put the question.

The CHAIRMAN. The question was already——

Mr. DENNIS. I was seeking recognition, Mr. Chairman. We have not debated this motion and I think the member is entitled to state his reasons for his position before we vote.

The CHAIRMAN. The question has already been put.

Mr. DENNIS. I know that, Mr. Chairman, but I was yelling at you at the top of my voice before you put it.

The CHAIRMAN. I recognize the gentleman for his 30 seconds.

Mr. DENNIS. I appreciate the chairman's courtesy in allowing me to debate the motion and I would say that I am opposed to this resolution and this letter, although my friend from California has greatly improved it, for two basic reasons.

In the first place, in my opinion, it is a useless gesture. The President, for reasons which he asserts are legal and constitutional, has obviously failed to comply with the subpoena and such inferences as may be drawn, we will draw, regardless of whether we write a letter or not.

In the second place, even in its amended form, the letter, in my opinion, asserts certain grave and important and unresolved legal propositions which it is my belief we should have a judicial determination upon before we proceed on the basis of their validity. For those two reasons, I vote no.

Mr. BROOKS. Question, Mr. Chairman.

The CHAIRMAN. The question has been put and the question is whether a rollcall has been demanded and the gentleman from Maryland requested a rollcall and the rollcall is demanded on the adoption of the motion of the gentleman from Alabama's amended by the substitute.

All those in favor, please vote aye; all those opposed: no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.
 The CLERK. Mr. Flowers.
 Mr. FLOWERS. Aye.
 The CLERK. Mr. Mann.
 Mr. MANN. Aye.
 The CLERK. Mr. Sarbanes.
 Mr. SARBANES. Aye.
 The CLERK. Mr. Seiberling.
 Mr. SEIBERLING. Aye.
 The CLERK. Mr. Danielson.
 Mr. DANIELSON. Aye.
 The CLERK. Mr. Drinan.
 Mr. DRINAN. Aye.
 The CLERK. Mr. Rangel.
 Mr. RANGEL. Aye.
 The CLERK. Ms. Jordan.
 Ms. JORDAN. Aye.
 The CLERK. Mr. Thornton.
 Mr. THORNTON. Aye.
 The CLERK. Ms. Holtzman.
 Ms. HOLTZMAN. Aye.
 The CLERK. Mr. Owens.
 Mr. OWENS. Aye.
 The CLERK. Mr. Mezvinsky.
 Mr. MEZVINSKY. Aye.
 The CLERK. Mr. Hutchinson.
 Mr. McCLORY. By proxy, no.
 The CLERK. Mr. McClory.
 Mr. McCLORY. Aye.
 The CLERK. Mr. Smith.
 Mr. SMITH. Aye.
 The CLERK. Mr. Sandman.
 Mr. SANDMAN. Aye.
 The CLERK. Mr. Railsback.
 Mr. RAILSBACK. Aye.
 The CLERK. Mr. Wiggins.
 Mr. WIGGINS. No.
 The CLERK. Mr. Dennis.
 Mr. DENNIS. No.
 The CLERK. Mr. Fish.
 Mr. FISH. Aye.
 The CLERK. Mr. Mayne.
 Mr. MAYNE. No.
 The CLERK. Mr. Hogan.
 Mr. HOGAN. Aye.
 The CLERK. Mr. Butler.
 Mr. BUTLER. Aye.
 The CLERK. Mr. Cohen.
 Mr. COHEN. Aye.
 The CLERK. Mr. Lott.
 Mr. LOTT. No.
 The CLERK. Mr. Froehlich.
 Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The clerk will tell the vote.

The CLERK. Twenty-eight members have voted aye; 10 members have voted no.

The CHAIRMAN. The motion is agreed to.

I recognize Mr. Butler for a unanimous-consent request.

Mr. BUTLER. Mr. Chairman, with reference to the letter we have just approved, I would like unanimous consent to strike the word "sole" appearing in the last sentence of the second paragraph on the grounds that it is redundant with the word "only" appearing in the same sentence.

Mr. McCLORY. Would the gentleman yield?

Mr. BUTLER. Yes.

Mr. McCLORY. I would like to suggest that you make your unanimous-consent request by striking the word "only" because the Constitution refers to the sole power of the House on impeachment. Strike the word "only" and leave the word "sole."

Mr. BUTLER. That is satisfactory with me, Mr. Chairman, if it is satisfactory with the gentleman.

The CHAIRMAN. The gentleman is offering a unanimous-consent request?

Mr. BUTLER. I withdraw my request that the word "sole" be stricken and ask unanimous consent that the word "only" be stricken.

The CHAIRMAN. Without objection, so ordered.

Mr. RAILSBACK. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you for recognizing me, Mr. Chairman. I have a motion at the desk and I would like it read at this point.

The CHAIRMAN. The clerk will read the motion.

The Clerk [reading]:

Motion offered by Mr. Conyers.

Resolved, that the Committee on the Judiciary of the House of Representatives, considers the refusal of Richard M. Nixon to comply with subpoenas issued on April 11, 1974, and May 15, 1974, under the authority of the House of Representatives and requiring the production of evidence essential to the fulfillment of the high responsibilities vested in the House of Representatives by the Constitution of the United States, obstructive of the impeachment process, and the committee hereby declares its resolve to take such actions as shall be necessary to vindicate the legitimate privileges of the House, and to carry out the duties placed upon it for the protection of the people of the United States, pursuant to the Constitution. In view of the determination of Richard M. Nixon to continue in open and notorious defiance of the law, the committee resolves to place on the agenda at the earliest practicable date the consideration of an article of impeachment charging the President with contempt for and obstruction of the constitutional process.

Mr. CONYERS. Mr. Chairman, may I be recognized briefly in support of the motion?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I will not take up more time than is necessary, but feel it critical that the record reflect the uselessness of sending letters to the President, because virtually every member of this committee has said privately that the President is in contempt of this committee and of the Congress. I will not say it publicly: He has continued the obstruction of justice and is in willfull and notorious defiance of the law. So the question is what should we do about it? For his conduct is not just a matter of failing to treat us as respectfully as one branch of Government might expect from another. No, indeed; he has raised a new doctrine, never previously asserted, which, if we do not separate it out from the allegations that brought our impeachment inquiry into existence and deal with them separately, will surely corrupt the impeachment process for all time.

Stonewalling this committee, to use a White House phrase with which we have become familiar, is not just another possible impeachment offense to be added to whatever list, if any, we finally come up with. Indeed, it is the one that will establish, if we fail to act here and now, Mr. Chairman, the standard and regular method to defeat the constitutional obligation of any future impeachment proceedings with regard to a President.

The President can no longer remain unchallenged in his attempt to limit the investigatory authority of this committee and if he is allowed to do so, it would disappoint those who carefully placed impeachment proceedings in the Constitution and prove that we here are unmindful of the trap that we have already been led into. If he will not give us the evidence that we want that he has, then immediate impeachment must necessarily follow.

It seems, in short, Mr. Chairman, that we have reached a point where, unless we separate out this particular offense, consider it separately, move it to the House for disposition, at the same time reserving the right to deal with the other articles or whatever other allegations are before us, we will have permanently, by precedent, impaired the impeachment process so that any President will be able to follow this rule, this doctrine that we have, in my judgment, unfortunately and unwittingly swallowed, that has no existence in law, and will, in other words, make Presidents immune to the impeachment process.

Mr. DRINAN. Would the gentleman yield?

Mr. SEIBERLING. Would the gentleman yield?

Mr. CONYERS. I would yield to the gentleman from Massachusetts first and then to the gentleman from Ohio briefly.

Mr. DRINAN. Thank you, Mr. Conyers, for yielding.

I wonder if you would spell out a bit more precisely what you mean by the earliest practical date. As I read your resolution and the resolution already adopted by the committee, they are not really substantially different, but as I gather, you suggest that we move your resolution ahead of the articles of impeachment if we come to that and the motion adopted by the committee by 28 to 10 already states that the committee's decisions on these matters will be contained in our recommendations to the House. It also states that the President's refusals in and of themselves might constitute a ground for impeachment.

What do you mean, in other words, by the earliest practical date?

Mr. CONYERS. Father Drinan, all I want to do is separate this offense from the rest of the allegations, because it is of highest priority, consider it at the first meeting that the Chairman can set, move it to the floor of Congress, have it voted upon, and continue the process under which we are considering the allegations that caused the committee to come into formation. So it is a very important time distinction.

I yield to the gentleman from Ohio.

Mr. SEIBERLING. I thank the gentleman. My question is similar to the question of the gentleman from Massachusetts. I wonder if the gentleman would give us his reason as to why this should be done, in his view, at the earliest possible time, which is what I understood the gentleman to mean, rather than to include this type of charge in whatever final action the committee takes after having heard all the other evidence.

I agree with the gentleman, let me say, as to the absolute necessity of not allowing this deliberate refusal on the part of the President to go unchallenged, but I simply ask the question of why do we need to do it at this time instead of at the end of our effort?

Mr. CONYERS. Because, simply put, the President is going to limit the quality of the evidence that is gathered on the other potential articles that this committee will come forward with. They will be tainted, if you will, by not having the benefit of the best evidence, which is clearly in his possession.

Mr. SEIBERLING. But nevertheless——

The CHAIRMAN. The time of the gentlemen has expired.

I recognize the gentleman from Illinois, Mr. McClory.

Mr. McCLORY. Mr. Chairman, I have given thought to the legal basis for enforcing the subpoenas that have been issued by this committee. I find that there are a number of routes that the committee might take. However, I do not believe that any of them are satisfactory and none of them are ones that I want to advance at this time. I feel that the House has inherent power to enforce its own subpoena if we wanted to take that kind of a drastic step.

Also, there are legal remedies, common law and statutory remedies available to us, all of which, however, I have studied and regarded as unsatisfactory and unacceptable.

In the letter that we are sending today, which I support, there is the statement made that inferences may be drawn from the President's noncompliance and at a later time, the subject of a possible article of impeachment based upon his refusal may be taken up by this committee.

Mr. Chairman, I think that at the very least, this is premature, that it should not be taken up at this time, that it should only come at the conclusion of our hearing.

I respectfully move to table the motion offered by the gentleman from Michigan.

The CHAIRMAN. The gentleman has moved to table the motion of the gentleman from Michigan and the motion to table is not debatable. The question occurs on the motion of the gentleman from Illinois.

All those in favor of tabling the motion——

Mr. CONYERS. I ask a record vote, Mr. Chairman.

The CHAIRMAN. A record vote is demanded and the clerk will call the roll.

All those in favor of the tabling motion say aye; all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. By proxy, aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATT. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye. The clerk will report the vote.

The CLERK. Mr. Chairman, 29 members have voted aye; nine members have voted no.

The CHAIRMAN. The motion to table is agreed to.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback?

Mr. RAILSBACK. Mr. Chairman, I have a motion at the table.

The CHAIRMAN. The clerk will read the motion.

The CLERK [reading]:

Motion by Mr. Railsback.

I move that we bring before the committee for its consideration H.R. 13708 or any material similar thereto.

[Bill H.R. 13708 follows:]

[H.R. 13708, 93d Cong., 2d sess.]

A BILL To confer jurisdiction upon the District Court of the United States for the District of Columbia of certain civil actions brought by the House of Representatives Committee on the Judiciary, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the District Court of the United States for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, of any civil action heretofore brought by the House of Representatives Committee on the Judiciary to enforce any subpoena or order heretofore or hereafter issued by said committee, pursuant to H. Res. 803 adopted February 6, 1974, to procure the production before the said committee of any information, documents, taped recordings, or other materials relevant to matters the said committee has been authorized to investigate by H. Res. 803, and the said district court shall have jurisdiction to enter

such decree in any such civil action as may be necessary or appropriate to enforce obedience to any such subpoena or order.

(b) Such civil actions shall be given preference and expedited and shall be heard at the earliest practicable date.

(c) The House of Representatives Committee on the Judiciary shall have authority to prosecute in its own name or in name of the United States in the District Court of the United States for the District of Columbia any civil action heretofore or hereafter brought by said committee to enforce any subpoena or order heretofore or hereafter issued by said committee pursuant to H. Res. 803, adopted February 6, 1974.

(d) The House of Representatives Committee on the Judiciary may be represented by such authority as it may designate in any action prosecuted by said committee under this Act.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Let me say at the outset that I find no thundering ground swell of support for this. I am not going to belabor it, but I feel very strongly that we are making a mistake if we do not seek to obtain a resolution of it. I say that because I think the alternatives speak for themselves.

The first alternative is that we, in our attempt to reflect our pride at Congress as an institution, we are not going to get the evidence that we are seeking to get to the truth of all of the allegations that have been leveled against the President. In other words, what we are saying is we do not need help from the third branch to act as an arbiter because we are self-sufficient, we are strong enough to get the evidence ourselves, but the truth of the matter is we are not going to be able to get the evidence. And apparently, we have elected not to even try to get the evidence.

The other thing is we distinguish between the action taken by the Senate select committee, the Watergate Committee, when it ran into exactly the same problem that we have run into. It was on November 9, 1973, that the Senate passed unanimously a bill called Senate bill 2641, which had the effect of conferring jurisdiction upon the District Court of the United States for the District of Columbia of civil actions brought by the Select Committee on Presidential Campaign Activities to enforce or secure a declaration concerning the validity of any subpoena or order issued by it.

Now, the effect of that was that the Senate committee was unwilling to go through the archaic, antiquated, enforcement mechanisms that were available to it and are now available to us. In my opinion, it recognized that a mandamus action would not lie, nor would a declaratory judgment action lie, because neither of those actions would confer jurisdiction where there was otherwise no jurisdiction. That is exactly the situation that confronts us at this time.

There is only one way, I have come to the conclusion, that we can get jurisdiction to force the President either to comply with our subpoenas, which I believe have been lawfully issued, and that is to confer jurisdiction, in which event, we are demonstrating our awareness of these facts. We are recognizing that we have a right to get whatever materials we believe necessary or relevant for our inquiry. At the same time, we are demonstrating an awareness or a recognition that the President may have a right to assert executive privilege or national security or unilaterally declare nonrelevance, although let

me make it very clear. I think if the court was given jurisdiction to decide the question, I have no doubt but what the court would rule in our favor. I think it would strengthen our position. I would only say to my colleagues that if the court were to so rule and the President were still to refuse to comply, in my opinion, that question has been resolved and he is probably going to be impeached and be impeached rather quickly.

My feeling is that at this point in time, a definitive decision on the question of executive privilege could serve a most meritorious purpose. In other words, we have what some people have called a myth, we have what other people have said is a legitimate thing, this question of executive privilege. I cannot think of a better time to try to get it resolved, a definitive decision on the question of executive privilege.

Let me just say that the bill I am asking be considered is very similar to the bill that we gave to the Senate Watergate Committee to give them the authority. It was enacted rather quickly. The President let it go into effect without signing it but without vetoing it. I cannot help but think, Mr. Chairman, that it would give our actions a strength that, let us face it, we do not have right now. It would give our actions, I think, a certain credibility and I would urge the adoption of the motion.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, I speak with some reluctance or regret against the motion, the proposal of the gentleman from Illinois, a distinguished and able member of the committee, whose legal skills are excellent. I am concerned that anyone think that we did not try to get the evidence. As I remember, we subpoenaed, No. 1, 33 to 3. It is true, when he said "Do you mean it?", we said 20 to 18.

Now, we had a second subpoena, 37 to 1, which we have now said we mean it, 29 to 10.

I do think we are making every effort, every reasonable effort, to get the evidence. It was with some reluctance that I did not support the gentleman from Michigan. I thought it was premature, as members of the other side stated, premature because every dog is entitled to one bite, every horse is entitled to one kick, and I do not know what the letter means legally that we have sent today. I do not know—I do not know what it will mean to the President. I know what it means to me: you have two-timed me one time too often. Now, the next time, I think we will go differently.

The proposal of the gentleman from Illinois has problems, as I see it, in that it would have to go to a subcommittee. There would certainly have to be hearings on this, because there is not unanimous agreement on what should be done. This will take you into markup, take you to other amendments, take you to the full committee, take you to the Rules Committee, and that is an experience. It would then take you to the House, then to the Senate, and then, through their committee action, to the President. And it is not an uncommon thing in this administration or any other administration for the President to say, I cannot sign this bill unless you make these changes. And this is certainly not an area in which we want to be negotiating in that fashion.

I think the proposal was sound in a legislative matter such as the Ervin committee faced. I think it was a sound approach, perhaps it could be, in a situation such as Mr. Jaworski faces, a judicial legal matter. Perhaps Judge Gesell's problems through criminal court might be aided through legislation like this. But, Mr. Chairman, in this case, this is the court. This is a question of parliamentary law. We seek not to delay, we seek not to get into a situation where we argue over definitions of impeachable offenses.

As my text, I would say we have article I, section 2, paragraph 5, "The House of Representatives shall choose their Speaker and other officers and shall have the sole power of impeachment."

Article I, section 3, paragraph 6: "The Senate shall have the sole power to try all impeachments."

I think we seek to avoid delay. We get into the questions of what is an impeachable offense. Well, there are 435 Members of the House and 100 Members of the Senate, and there is no one on this committee. I am sure, who will argue that they can require any other Member of this body or the other body to accept their definition of an impeachable offense. Not only that, they are not all lawyers. Some people think that is a good thing.

Mr. Chairman, I think we would make an error if we seek to delegate what I think is a nondelegable authority under the Constitution and respectfully urge the defeat of the gentleman's proposal.

THE CHAIRMAN. Before recognizing any other member, I would like to put a question to both counsel, who have been retained by this committee for the purpose of advising us as to matters that are legal in nature and I am sure that with two members of the legal staff, we could expect some recommendations in this area.

Mr. Jenner, could you please give us your views regarding this proposal and its implications?

MR. JENNER. Thank you, Mr. Chairman.

Ladies and gentlemen of the committee, the desire to accomplish this—with that I have full sympathy. The possibility of accomplishing it does pose some serious legal constitutional problems. The first is that to which the gentleman from Missouri adverted: Would a bill of this character seek to delegate to the Judicial Department a constitutional power that is conferred solely on the House of Representatives? That does pose a serious constitutional question.

Secondly, assuming the legislation is enacted, would the courts undertake to say that this House of Representatives may not confer upon it political jurisdiction or delegable constitutional powers?

Having reviewed, as we all have, over the period of years, the decisions of the U.S. Supreme Court and the courts of appeals in this area, we realize as lawyers the great reluctance of the court, any court, to undertake jurisdiction in a matter where there is a flavor of political function, especially where here, there is a second bridge which would be provided by this legislation on the legislative division of our government to the judicial. The Framers of the Constitution provided only one bridge and it is the highest privilege provided in the Constitution, dealing with the separation of powers and very carefully, the Constitution says that one bridge will be in the Congress of the United States in two divisions: First, the House of Rep-

representatives will have the sole power of accusation or impeachment; and the Senate of the United States will have the sole power to try that impeachment and vote by two-thirds vote, favorable if that is the way, or otherwise not.

Apart from that serious constitutional problem of delegable power of a combination of political power in supplying a second bridge, really *sui generis* or *ad hoc*, just from you ladies and gentlemen and your colleagues on the floor of the House, it presents these problems: Assuming the legislation is enacted and does not delay the committee, as the gentleman from Missouri has drawn your attention, that would then present to a court necessarily on the issue of power to issue the subpoena and the obligation of the President of the United States to respond. I fear it would get into the issue of what is an impeachable offense. In order, if the court took jurisdiction, for the court to determine that the subpoena issued, enforcement of which is sought through the judicial process or declaration, the court must necessarily, in exercising a judicial function, say this is proper within the powers of the House. I would not expect the court to say that the House may do anything it sees fit regardless of the provisions of the Constitution. And to posture its decision, it would necessarily, in my judgment, have to consider, at least in general, on the subject matter of what is an impeachable offense.

Now, the bill to which the gentleman from Illinois, in proposing this, referred, and the gentleman from Missouri also referred as to other legislation, in pending criminal proceedings or pending civil proceedings, as the case might be, that issue is not one, that legislation, if you please, ladies and gentlemen, is not a bridge. It is not a bridge from the legislative department to the executive department. It is part of the functioning of whether the request for the subpoenas and obtaining of the information called for by those subpoenas is necessary and desirable to generally a legislative function in the case of the House of Representatives or the Senate, or whether, in a particular piece of legislation, that data which is sought is relevant to the issues, whether, as in the issue before his Honor, Judge Gesell, at the moment, certain documents are *Brady* material. That is, that under the Constitution of the United States, the Government itself is required to supply to defendants in criminal proceedings that which is within the possession of the Government that may enable a defendant to sustain his defense or give him an opportunity to, a better opportunity to sustain his defense. That sort of thing is not present here.

For these reasons, and I am really raising, now, not attempting to make any decision, of course—it is not my privilege and province to do so. But I do say that initially, there is a serious problem whether you may delegate powers granted to you solely by the Constitution, which says only you, meaning the House of Representatives, only you have this power.

Mr. SEIBERLING Mr. Chairman?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I would only add this, Mr. Chairman. Assuming the statute were passed and the court were to take jurisdiction, I think it is inevitable that the court would get into questions of relevance and good cause with respect to the subpoena, which would take it, as the

Congressman from Missouri and Mr. Jenner said, into the question of what is an impeachable offense. Under the Constitution, the House of Representatives has the sole power to determine what is an impeachable offense. I think it puts the court in an impossible situation.

I think the court would say, we have no mandate to review the relevance of the material, but then there is the district court and the court of appeals and the Supreme Court, and you would have delays that, in my judgment, would adversely affect the constitutional process.

Mr. DENNIS. Mr. Chairman?

Mr. SANDMAN. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. I speak in opposition to the proposal only because it comes from my side of the aisle and I would not want anybody to think that this is the thinking of the side that I sit on.

I am wholly in accord with the representations made by counsel as well as those made by the gentleman from Missouri. There is not any question that we have sole responsibility. "Sole" is a strong word. It does not give us the right to divide that authority and it does not in any way include the court as the arbiter between the legislative branch and the executive branch.

Now, I think this: I voted for the letter that the chairman has submitted for whatever worth it may have. I have from the very beginning believed that we should get all of these things. I am unhappy that we did not get them. But I want to compliment the staff and counsel for having put together in my judgment the greatest pretrial study ever made.

Now, based upon this, we know who the witnesses are. We know they are alive and healthy. They can be brought here. We know what they have to say, because they have said so much. So I think it is time we got on with them. With this, I think we can resolve this case without unconstitutionally delegating authority to the court.

Thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I thank the chairman.

I would not attempt to expand on the excellent exposition of the constitutional ramifications of this proposal that has already been presented by counsel. I would like to make it clear that my support for the gentleman from New York, Mr. Smith's, earlier amendment was not intended to indicate that I supported his reasons for introducing the amendment, but merely that I felt the language was better as a change in the letter.

I would like to add one other point here, which I think is crucial for this committee to start becoming more cognizant of. That is the absolute urgency of moving this investigation along with the utmost speed consistent with doing a responsible job.

I think that we all recognize that this country is in a very precarious condition because of the inability of the President to function effectively while this whole question of impeachment is unresolved. I do not think that we should undertake any action that is not absolutely necessary that involves delay in our coming to a decision.

As to the fact that we will not have all of the evidence if the President refused to comply with it, this is not the trial, this is an investigation to determine whether there is probable cause to believe that President Nixon has committed impeachable offenses. And if he fails to produce the evidence which we have rightfully asked, as far as I am concerned, that alone is sufficient to establish probable cause when added to all of the other evidence that we already have. Therefore, I think it would be unnecessary and highly inadvisable to adopt this kind of an effort which, at the very least, would delay, and at the worst would be a futile act.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

I speak in strong support of the motion of the gentleman from Illinois. I would like to submit to my colleagues that this is an important motion and that the gentleman from Illinois is affording us a lawyerlike way to resolve our problems if we will just take it.

Now, we are confronted here with a constitutional clash or impasse between the legislative and the executive branches of the Government. We are asserting that we have a right to subpoena practically anything we want for the purposes of this inquiry. The executive is asserting that he has a constitutional right under the doctrine of the separation of powers and the doctrine of executive privilege to withhold some of these things. Now, in my humble judgment, neither of us is in a position to really decide that question and the only branch that can properly decide that constitutional question is the judicial branch, which in my judgment was created for that very purpose.

Now, I have, I think, some pretty good scholarly support in that, although even as a country lawyer, it seems to me that that makes a good deal of sense. Raoul Berger, for instance, has written a book on executive privilege and I have read and studied the long article which he wrote first, which is the basis for the book. He says again and again that the executive privilege matter should be resolved by this Congress adopting general legislation which will give us a right to go to court and get a judicial judgment on the subject, the very thing that the gentleman from Illinois is attempting to do in this particular instance here by his proposed legislation.

If you have a constitutional clash between the two other branches, the judiciary is the only place you can go to resolve it, and we are talking about impeaching the President because he is standing on what he says is a constitutional ground, without any determinative decision as to whether he is right or whether he is wrong. If we got the court to rule that he is wrong, the situation would be far otherwise.

Now, just briefly addressing myself to the remarks of my good friend, Mr. Jenner, I recognize the court might refuse jurisdiction of this matter on the ground that it is political, but we cannot tell about that until we give them the chance to. We ought to do what we can do. I submit that we are not surrendering one iota of our prerogative when we let the judicial branch function in its own sphere and perform its own prerogatives. We are not asking them to impeach; we are asking them simply to give us the tools to enforce a subpoena to carry out our prerogatives. That, I think, is a very different thing.

So I hope my colleagues will give the gentleman's motion very serious consideration and support.

The CHAIRMAN. Mr. Thornton.

Mr. THORNTON. Thank you, Mr. Chairman.

I greatly respect the gentleman from Illinois and his efforts to obtain compliance with the subpoenas which this committee has duly voted. But I must disagree that this is the proper means to obtain that compliance.

Now, as you pointed out in *Marbury v. Madison*, it has been long recognized that the courts have the power to rule upon the constitutionality of particular executive and legislative action. However, the statement by the court that you quoted in your letter to us, that it is emphatically the province and duty of the judicial department to say what the law is—that statement, taken in isolation, does not reflect fully the holding of the court.

In the same opinion Mr. Chief Justice Marshall also said, and I would like to quote :

The province of the court is solely to decide on the rights of individuals, not to inquire how the executive or executive officers perform duties in which they have a discretion. Questions in their nature political or which are, by the Constitution and law, submitted to the executive, can never be made in this court.

Now, this matter that we are considering today has been specifically delegated to the House of Representatives. It has been implied that the need is to muster enough support of public opinion to convince the President to comply with our subpoenas. The suggestion is that a ruling of the Supreme Court would give us much more credibility and increased public support. But I submit, Mr. Chairman, that the question is not whether either the House or the Supreme Court or the weight of public opinion can convince a reluctant President to honor a subpoena. If that should be the question, it was answered when Andrew Jackson said, or was reported to have said, that "John Marshall has made his decision, now let him enforce it." In short, the courts have no more power to enforce a subpoena against the President than does the House of Representatives.

The real question is of authority and compliance with the rule of law as distinguished from power. The standard is what the Constitution requires, not what public opinion would support. And while it is true that the courts may on occasion act as an umpire between the Congress and the President, there are also many issues, as have been pointed out, where the courts will decline to intervene because the question is deemed to be one which is not intended to be determined by the courts and relevant standards to that effect have been set out in *Baker v. Carr*, which says that the courts will not entertain an issue where there is a textually demonstrable constitutional commitment of that issue to a coordinate political department. The court then proceeds to list other reasons why the courts would not entertain a particular case. I think clearly from *Baker v. Carr*, we can clearly determine why the courts would not entertain a decision granted solely to the House of Representatives. Were we to proceed in this way, I think we would, as the gentleman from Missouri has stated, merely delay our proceedings and finally reach a determination that the courts could not entertain this question, leaving us certainly in no better position than we now find ourselves.

Mr. FROEHLICH. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Mr. Chairman, I oppose the amendment of the gentleman from Illinois because I fear that he is just not being realistic when he holds out any hope at all to us that the Supreme Court could possibly hear and dispose of this matter next month. I think the passage of this amendment would inevitably delay the progress of this inquiry very substantially and we have had far too much delay already.

While my friend from Indiana, speaking in support of the amendment, has said that it offers a lawyer-like solution, I fear that the American public has come to believe that too often a lawyer-like solution involves delay and I think we here must do everything we can properly to prevent further delay.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

I particularly appreciate your recognizing me at this time, because I am on record as favoring judicial involvement until I listened to Mr. Jenner a few minutes ago.

I do not know that there is any other practical way of enforcing our subpoena and getting the needed material.

I also heretofore favored the courts coming into the picture because we are presenting a fairly novel doctrine of congressional supremacy here that the American people are not accustomed to and I felt that if the Supreme Court agreed to this, it would be better accepted by the majority of the American people. However, as I said, I am persuaded by Mr. Jenner in his exposition that the sole power and responsibility is vested in this committee. We cannot pass the buck and when the time comes, it is up to us to bite the bullet.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. I wonder if the gentleman from Illinois would consider withdrawing his motion at this point. As we know, Special Prosecutor Jaworski has an expedited appeal underway at the present time and there exists the very real possibility that the Supreme Court will resolve that challenge to executive privilege, and obviously, if the Supreme Court upholds Mr. Jaworski's position, our position on executive privilege would become moot, because if Jaworski, in his case, can challenge successfully executive privilege, then we certainly have a stronger position in that regard. Since that is only a few weeks away, I would suggest that the gentleman defer the vote on this particular question because there are, from my sense of the committee, insufficient votes to approve it anyway, and with the time situation in getting it through both Houses, I do not think we would be able to resolve it before the Supreme Court rules on Mr. Jaworski's motion anyway.

Mr. RAILSBACK. Would the gentleman yield?

Mr. HOGAN. I yield to the gentleman from Illinois.

Mr. RAILSBACK. I thank the gentleman for yielding and he does make a good point, I think, about the Jaworski appeal. I think that is going to be very significant. Let me just say to my friend that some

of my, one or two of my remaining supporters, I think, would like to be heard, but I think maybe I can help to expedite by not asking for a rollcall.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman.

I would like, in order to preserve the integrity of the record, to make it very clear that I for one do not agree that the present appeal or review that Mr. Jaworski is seeking would have any effect whatever upon our constitutional power. It is a judicial controversy. That is a parliamentary controversy. There is no parallel, in fact, no analogy. I think we should consider them as totally dissimilar and proceed with our own duties without regard to whatever may go on in the review sought by Mr. Jaworski.

My only concern here is that people sometimes, some of my colleagues seem to indicate that we have no power to enforce. I respectfully submit that we have the ultimate power to enforce our orders through removal of the President from office. At the present time, however, with the letter we have approved, which puts the President on notice, I think we have taken or are taking an essential preliminary step of laying a foundation for subsequent action. The President is in open and flagrant defiance of the Congress and the Constitution and the American people, but he stands in an area of repentance and he is still able to purge himself of that defiance if he complies. But if not, I certainly feel that we can proceed with our ultimate power of coercion and probably at a later time, reconsider the motion heretofore made by Mr. Conyers.

Mr. COHEN. Will the gentleman yield?

Mr. SEIBERLING. Will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Ohio.

Mr. SEIBERLING. I would just like to say that what our letter is saying is there is still time, brother.

The CHAIRMAN. Whom did the gentleman yield to, Mr. Danielson?

Mr. DANIELSON. I believe I yielded to my colleague from Ohio.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. If I may repeat, I believe our letter we reported out a little while ago is saying to the President, there is still time, brother.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Chairman, I would like to take this brief opportunity to commend my good friend and colleague, Mr. Railsback, for his efforts and industry in trying to search out some viable alternatives to what is inevitably going to be a confrontation, intentionally so under the Constitution, from my point of view. I think time and time again, the gentleman has demonstrated that he is not cast in concrete; his views certainly are not. As a result, he brings a rather strong creative influence to the committee.

That is the good news, Tom.

The bad news is that having listened to Mr. Jenner, who answered many of my own questions about the question of delegating at least partial constitutional authority to the courts, can you have a partial

delegation of authority. And further, the question, as I understand you, Mr. Jenner, is that the court very likely could not rule upon the question of subpoena power and executive privilege without getting into the question of defining an impeachable offense. In view of those particular problems, I would have to say that I am opposed to the gentleman's proposal.

Also for the reasons pointed out by Mr. Hogan, and I would just take issue with the other suggestion that it would have no impact upon us, I think it would have no legal or binding impact upon what happens with the Supreme Court as far as Mr. Jaworski is concerned. But I do think from a practical point of view, if the Supreme Court does sustain Mr. Jaworski, then I think we are in a much better position to insist upon our demand and to have public pressure brought to bear.

I would only add one note of caution. Mr. Hogan suggests that there is an expedited appeal underway. The White House has in fact opposed an expedited appeal, so it may very well take more than 3 weeks to have a decision by the court. It may take until next October. So if the gentleman from Illinois is going to offer his amendment or does at a later time, it might be a substantially later time.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. I want to associate myself with the remarks of the gentleman from Arkansas, Mr. Thornton, and commend him for the splendid presentation.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Mr. Chairman, I want to speak briefly in strong support for the resolution of the gentleman from Illinois and for the reasons given by him and by the gentleman from Indiana, Mr. Dennis.

As far as delay is concerned, this committee has already had experience, of course, with a similar sort of legislation that we passed out of subcommittee and full committee and secured the execution by the House and the Senate, and it became law, in aid of the Senate select committee. This committee has plenty of other work to do and it seems to me that this is an aid to this committee that we might well pass now and let it simmer and possibly go to work for us as we do our other work. I thank the chairman.

The CHAIRMAN. Mr. Froehlich?

Mr. FROEHLICH. Mr. Chairman, thank you for the recognition. I have watched the Senate Watergate hearings from time to time and I know that when it gets down to this end of the table, there is not much that can be left to be said. But I am going to say it again anyway.

Mr. Chairman, it is our obligation to the American people to leave no stone unturned in gathering hard evidence to base a decision upon. I agree with those who say we are akin to a grand jury and that we must base our decision on probable evidence. But I remind everyone here that we also become the prosecutor. We become the prosecutor in the Senate if the impeachment goes forward. If we are to become that prosecutor, we need all available evidence.

Now, we may base some decisions as we go along to hurry this decision without all the evidence. But we could have a parallel thrust

to try to use the courts to get additional information that we deem relevant and that we think is necessary, because some day, if we get to the impeachment of the Senate, we are going to need this type of evidence.

So I believe that in conducting this investigation, the committee is entitled to seek all relevant evidence of specific Presidential misconduct. But that does not necessarily follow that the committee is entitled to receive from the President all the evidence it seeks. In my opinion, as a matter of fundamental constitutional principle, the committee does not have unlimited power to secure evidence from the President. The President, in some instances, may raise a valid legal objection to a demand for full compliance with a committee subpoena. There are potential claims of relevancy, national security, executive privilege, attorney-client privilege, fourth amendment right of privacy, and fifth amendment right against self-incrimination that the President may wish to assert. The committee must not assume a position in which it can dismiss all of these claims out of hand. For the committee to adopt such an extreme view of its power would be to embrace a mechanism of harassing, confounding, and eventually dismantling the executive branch of government; not only at this time in this administration, but also at any time in a future administration.

If the President now may offer no recognizable objection to such a sweeping and unlimited power, then no President or future executive or judicial officer will ever be certain that his every statement and action in office will not be exposed to the public at the whim of Congress. This would have a stultifying effect upon the conduct of government. Certainly, Congress would never permit itself to become liable to such an encroachment by other branches. Inasmuch as the House does not possess, I think, an unlimited power to extract evidence from the Executive, it is self-evident that the Judiciary Committee should not be the final arbitrator of when the President is not justified in not fully complying with the subpoena.

It is hard to suppose that an interested party, be it the committee or the President, will always be able to render a dispassionate judgment. Neither the President nor the committee should have a final determination of what evidence should be delivered. In this regard, a contention by the President that he has no legal obligation whatever to supply additional tapes or documents to the committee or that he has supplied all relevant data and information is utterly lacking in legal merit. The President should not be the final authority over what he releases to us.

Our only objective in these proceedings should be to investigate the culpability of the President with respect to impeachable offenses under the Constitution. The proceedings should not be held to establish the supremacy of the legislative branch and they should not be used to maneuver the President into a confrontation of power that could lead to the impeachment on totally unsubstantive procedural grounds. Such conduct by this committee would not be tolerated, in my opinion, by the American people. In my judgment, the time has come to resort to the court to settle the fundamental constitutional disputes that are clearly developing. If the committee is correct in its demands, then its position will be strengthened. If the committee is not correct, then by definition, we are not entitled to be successful.

The House may have the sole power to impeach, but most assuredly, this power does not carry with it the right to employ any procedure, any means, to establish the impeachment. Hence the House would not be surrendering any of its constitutional powers to the court.

The CHAIRMAN. The time of the gentleman has expired.

Mr. KASTENMEIER. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. KASTENMEIER. Is it appropriate for any member to ask that his remarks be extended in the record without delivering them actually? I think many members have cogent remarks to make, but for purposes of expedition of the proceedings, if they appeared only in the record, it may suffice.

The CHAIRMAN. That is not normal procedure in the conduct of committee meetings, but I suppose that with unanimous consent, we could get over that hurdle. So if members would ask unanimous consent to extend their remarks, I am sure the clerk would duly record them and the stenographer would report them and we would have them for the record. Mr. Moorhead.

Mr. MOORHEAD. Mr. Chairman, I wish to associate myself with the remarks of the gentleman from Wisconsin and to strongly support the resolution of the gentleman from Illinois.

While our committee and the House of Representatives has the sole power of impeachment, where that constitutional right conflicts with other constitutional rights, it is the court, the U.S. Supreme Court, that should have the determining power to determine where the conflict should be resolved. I think we get ourselves in nothing but trouble when we as a committee of 38 claim that we have the sole right to determine what the Constitution meant when it gave us that sole power of impeachment, especially when it conflicts with other constitutional rights. I feel very strongly that the President of the United States would obey a determination by the Supreme Court of the United States. We would get the materials that we have been requesting. But I do think that he has a right under the Constitution to assert the rights that he has been given under the Constitution and for us to say that it is grounds for impeachment for him to follow what he feels are his constitutional rights is just absolutely ridiculous and makes us look foolish as a committee.

For that reason, I think that the resolution Mr. Railsback has suggested is a way of getting us out of our dilemma, getting a determination from the Supreme Court, which I think each and every one of us would insist upon carrying out or would vote for impeachment if the President did not follow it.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Thank you, Mr. Chairman.

I support the resolution of the gentleman from Illinois. I think that he is giving us a reasonable method by which we can resolve our problems. As Mr. Dennis has stated, we can issue subpoenas and we can write letters and a President will set up a defense of executive privilege, national security, confidentiality of the Presidency, and so on. Now, some of these defenses may be proper legal defenses in some particular instances and in reference to some of the matter requested in a number of the subpoenas.

Now, this question of executive privilege is not new. It has been asserted by Presidents in the past and has been upheld. As Mr. Railsback has pointed out in the first paragraph of the second sheet of his letter dated May 28, sent to the members of the committee, it is necessary that where there is a dispute between one branch of Government, the legislative branch, and the executive branch on the other hand, this dispute must be settled by the judicial department.

To quote just a short sentence from that paragraph, "Some arbiter," said Justice Jackson, "is indispensable when balanced between branches, as executive and legislative. Each unit cannot be left to judge the limits of its own power."

I submit to you, Mr. Chairman, that unless we adopt the proposal submitted by the gentleman from Illinois or some similar method to resolve our problems and to get the information, we are going down a dead end. I urge the support of this resolution.

The CHAIRMAN. The question is on the motion of the gentleman from Illinois. All those in favor of the motion, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes have it.

Mr. RAILSBACK. Mr. Chairman, I wish a record vote on it.

The CHAIRMAN. I thought the gentleman had stated that he was not going to ask for a record vote.

Mr. RAILSBACK. I was, but I was asked by some of my colleagues to get one.

The CHAIRMAN. A record vote is demanded and the clerk will call the roll. All those in favor of the motion, please say aye; all those opposed no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.
 Mr. DANIELSON. No.
 The CLERK. Mr. Drinan.
 Mr. DRINAN. No.
 The CLERK. Mr. Rangel.
 Mr. RANGEL. No.
 The CLERK. Ms. Jordan.
 Ms. JORDAN. No.
 The CLERK. Mr. Thornton.
 Mr. THORNTON. No.
 The CLERK. Ms. Holtzman.
 Ms. HOLTZMAN. No.
 The CLERK. Mr. Owens.
 Mr. OWENS. No.
 The CLERK. Mr. Mezvinsky.
 Mr. MEZVINSKY. No.
 The CLERK. Mr. Hutchinson.
 Mr. McCLORY. By proxy, no.
 The CLERK. Mr. McClory.
 Mr. McCLORY. No.
 The CLERK. Mr. Smith.
 Mr. SMITH. Aye.
 The CLERK. Mr. Sandman.
 Mr. SANDMAN. No.
 The CLERK. Mr. Railsback.
 Mr. RAILSBACK. Aye.
 The CLERK. Mr. Wiggins.
 Mr. WIGGINS. No.
 The CLERK. Mr. Dennis.
 Mr. DENNIS. Aye.
 The CLERK. Mr. Fish.
 Mr. FISH. No.
 The CLERK. Mr. Mayne.
 Mr. MAYNE. No.
 The CLERK. Mr. Hogan.
 Mr. HOGAN. No.
 The CLERK. Mr. Butler.
 Mr. BUTLER. No.
 The CLERK. Mr. Cohen.
 Mr. COHEN. No.
 The CLERK. Mr. Lott.
 Mr. LOTT. No.
 The CLERK. Mr. Froehlich.
 Mr. FROEHLICH. Aye.
 The CLERK. Mr. Moorhead.
 Mr. MOORHEAD. Aye.
 The CLERK. Mr. Maraziti.
 Mr. MARAZITI. Aye.
 The CLERK. Mr. Latta.
 Mr. LATTA. No.
 The CLERK. Mr. Rodino.
 The CHAIRMAN. No.

The CLERK. Mr. Chairman, six members have voted aye, 32 members have voted no.

The CHAIRMAN. The motion is not agreed to.

The Chair would like to state that we will continue until the first quorum call and then proceed to answer the quorum if there are any quorum calls.

The Chair would like to call the attention of the members to the agenda once again. We have a number of items that are necessary to be disposed of, either this afternoon or, if necessary, we will have to continue to meet tomorrow. So I would hope that the members would consider this whenever they ask the Chair for recognition. Mr. Dennis?

Mr. DENNIS. Mr. Chairman, I have a motion at the clerk's desk which I will read or the clerk will read it.

The CHAIRMAN. The clerk will read the motion.

The CLERK [reading]:

Motion offered by Mr. Dennis of Indiana.

I move that House Resolution 1154, which reads as follows, be reported to the House by the Committee on the Judiciary with the recommendation that it do pass.

Resolved, that the Committee on the Judiciary is hereby authorized and directed, acting by and through its special impeachment staff counsel, the Honorable John Doar and the Honorable Albert Jenner, to seek leave to file, and to file, a brief as *Amicus Curiae*, and to seek leave to present, and to present, oral argument in support thereof, in the appellate proceedings with respect to the production of Presidential tapes and documents, which now are, or hereafter may be, pending in respect to the case of *United States v. John N. Mitchell et al.*, the same being case numbered CR 74-110 in the United States District Court for the District of Columbia.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis is recognized for 5 minutes.

Mr. DENNIS. I thank you, Mr. Chairman.

I call to the committee's attention that of course, this is another effort to get a judicial determination. In some ways, it is not as satisfactory as that of Mr. Railsback, because obviously, our position and that of the Special Prosecutor are not entirely the same. But nevertheless, it has certain advantages which I would like to submit to the committee.

As Mr. Hogan has pointed out a moment ago, the special prosecuting attorney now has before the court the very question of executive privilege and of obtaining these particular documents by subpoena that confront us and he has asked for an expedited determination. Now, if our very distinguished counsel could have a part therein and present the position of this committee, and if the expedited procedure is granted which the Special Prosecutor has asked, and we moved on the matter now, we could get a very expeditious decision and one in which we would have had a part and a participation. And if our position and the Special Prosecutor's position were upheld and we had helped to uphold it, I think we would be in a far, far stronger position to assert that any ignoring of a court order at that point was some type of an offense, if we wished to do so or thought that we ought to do so, than we possibly could otherwise be.

Therefore, I urge this on the committee as a way to get a judicial determination and one in which we participate without delay. And, I may point out, without subjecting ourselves jurisdictionwise at all,

because all we would do is appear as amicus curiae by leave for this special purpose.

I know we have a bell, Mr. Chairman, and I assume that we wish to continue this matter after we return. With that in mind, I am willing to rest my case at this particular point, but I hope we will have some further consideration when we return.

The CHAIRMAN. The Chair will recess the committee until 2 o'clock and we will resume consideration of the gentleman's proposal at that time.

[Whereupon, at 12:10 p.m., the committee recessed to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

At the time the committee recessed, Mr. Dennis had just completed his 5 minutes on the presentation of his proposal. And I think it would be appropriate for the Chair to ask both counsel, since this matter again is one with serious legal implications, for committee counsel's comments regarding this proposal. Mr. Doar.

Mr. DOAR. Mr. Chairman, I have concluded that it would not be appropriate for the committee to ask leave to file an amicus brief in this case in the Supreme Court. I have two reasons for that.

First, amicus briefs are generally designed to aid the court with respect to a particular issue or issues that are before the court. And in the case of *Nixon v. Sirica*, and the case that followed it in this case, the issues involved the question of the production of documents in response to a subpoena under rule 17. And I do not see how this committee could be of any particular help to the court on that issue.

The second thing is that sometimes amicus briefs are permitted to be filed by persons whose interest would be affected by the decision in the case. And I do not believe that this committee could properly or appropriately, could or should take the position that its interest with respect to its powers in an impeachment proceeding could be affected by whatever decision the court might make in the case before it.

The issues involve relevancy and good cause, and a limited privilege, the questions of whether or not the material can be produced from a noninvestigative agency of the Government, under *Brady*. It does not seem to me that this committee could appropriately present any kind of a brief on those matters.

The CHAIRMAN. Thank you, Mr. Doar. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman. Ladies and gentlemen of the committee, rule 42 of the United States Supreme Court dealing with amicus briefs provides in part, and I will read the full sentence that is applicable here, "It," meaning the amicus brief, "shall concisely state the nature of the applicant's interest." That is point one. "Set forth facts or questions of law that have not been or reasons for believing that they will not adequately be presented by the parties, and their relevancy to the disposition of the case before the court."

So, the drafters of the amicus brief on behalf of the committee would be faced with the problem, and this committee faced with the problem of stating what the interest of this committee is, and the narrow issue that is presented either to the court of appeals, if the case stays there, or in the United States Supreme Court, if it grants the expedited appeal.

And, second, you would have to confine yourself, the committee would be confining itself, Mr. Doar and I, as your counsel, to a statement within this sentence of the rule as to why we believe, or why the committee believes that the issues are not being adequately presented by Mr. Jaworski, either in the court of appeals or in the Supreme Court of the United States. And then we would have to, as a third division under the third clause of that sentence, also present why we believe the views of the House committee are relevant to the narrow issue presented in the *People v. Mitchell* case now on appeal and pending in the court of appeals.

All of those present some difficult questions for decision on the part of the committee. It is true also that in all amicus, when amicus briefs are permitted to be filed, that we would have to obtain leave of the United States Supreme Court or the court of appeals to file a brief. It is true that an amicus brief is not a party brief, and you do not submit yourself to the jurisdiction of the court, but you would have to ask for leave, especially in an issue of the character that is presented here, of the difference between or a bridge from one independent department of Government to another, and with respect to the Chief Magistrate of the Nation.

The courts will do everything possible, everything possible in a case that is pending before it with particular issues not to go beyond those issues, and not be led by the House of Representatives to go beyond them. And perhaps the court might say in its opinion, that at best, thinking of this favorably, that what we say here, we do not mean to express any opinion with respect to the rights of the House of Representatives to obtain material or enforce subpoenas in an impeachment proceeding.

The possible dropout, favorable dropout is that which was emphasized by Mr. Dennis, if we could receive some comfort at least by the fact that if Mr. Jaworski's position is sustained, the President of the United States would feel compelled, if the court sustains him, to produce the taped conversations he is requesting.

As you know, Mr. Chairman, and some members of the committee know, Judge Sirica this morning filed an opinion in which he declined to permit us to examine certain tapes that he has on the ground that he was limited in his custody of those tapes.

Here again, I have in the pit of my stomach some fear that once you get over into the judicial branch, unless you are in there as a party with some measure of control over the case, or being permitted to be heard fully, you are at the mercy of fine men, who are concentrating on the limited issues that are before them, and they think in those terms.

THE CHAIRMAN. Thank you very much.

MR. DENNIS. Mr. Chairman, may I—

THE CHAIRMAN. I recognize Mr. McClory.

MR. MCCLORY. Mr. Chairman, thank you. I certainly want to commend my colleague, the gentleman from Indiana, on his resourcefulness. And I think it is important that we explore every possible alternative in trying to secure the information that the committee requires in order to meet its inquiry. Many of the arguments that he has advanced are very, very logical and very persuasive.

However, I do not feel that this is an acceptable alternative. I think what it would do is it would be to conclude that we do have a remedy,

we have a remedy which exists by enforcing the subpoena through action of the House of Representatives of the Congress. But, it is not an acceptable one, and it is one that we do not want to employ at this time.

I would say that the argument advanced that we have a conflict between two branches of the Government, which we should then turn over to a third branch to arbitrate, is not a valid argument. For one thing, our role of impeachment is an exclusive role which is vested exclusively in the House of Representatives and in the Senate, and if, for instance, in the impeachment of a member of the judiciary, which is the most frequent exercise of this impeachment authority, we certainly could not say, well, we are going to turn that, the arbitration of that, over to the executive branch.

I would also like to point out that we are not in the same role, we would not be in the same role in the Supreme Court as Mr. Jaworski. Mr. Jaworski is a representative of the executive branch, and we are representing solely and exclusively the Congress of the United States, so that there are different issues, and I think that our counsel have very, very thoughtfully and capably explained the problem insofar as this procedure is concerned.

And while I dislike very much to disagree with my colleague from Indiana, I must oppose the action that he is proposing.

Mr. DENNIS. Might I inquire of counsel, Mr. Chairman, at some point, whenever it is appropriate? I would like to ask counsel a question.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I was going to make a motion, but I will withhold if the Chair decides, for the previous question, but I will withhold if the gentleman from Indiana desires.

The CHAIRMAN. The gentleman from Indiana has already spoken 5 minutes in support of his amendment. However, if he has a question to direct to counsel, I will recognize him for a question.

Mr. DENNIS. I thank the Chair, and also the gentleman from Wisconsin.

Mr. Doar, is it true that many of the tapes and documents which are sought by Mr. Jaworski in the proceedings which I refer to here are the same as the tapes and documents which we are seeking by our subpoena?

Mr. DOAR. Twenty of the 46 tapes, of the taped conversations are contained in the edited transcripts. The other 26 we are going to ask you to authorize a subpoena for today.

Mr. DENNIS. And they are also being asked by Mr. Jaworski; is that correct?

Mr. DOAR. Yes, that's right.

Mr. DENNIS. And is it not also true that the Executive against Mr. Jaworski, is asserting the same arguments of separation of powers and executive privilege, relevancy, basically that he is asserting against our subpoena?

Mr. DOAR. No, I do not think that is true. I think the arguments that were asserted in the lower court are arguments on a special appearance that involved executive privilege. Then there was the argument with respect to the claim that this is a dispute within the executive

branch. And then there were three arguments on the merits, one going to relevancy or good cause, one going to the limited rule or limited privilege of confidentiality, and one to the question that these were not appropriate *Brady* material because they were generated in a non-investigative agency.

Mr. DENNIS. Well, executive privilege and relevancy are involved, as you said, in both cases, right?

Mr. DOAR. No, I do not believe that they are involved in the same way before this committee.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. The gentleman from Wisconsin, Mr. Froehlich.

Mr. FROEHLICH. Mr. Jenner, I gather you changed your position somewhat from 2 days ago on this issue. Is that correct?

Mr. JENNER. I do not think so, Mr. Froehlich. I expressed the opinion day before yesterday to you and and others of the Republican group as to what an amicus curiae application was, and what limits the amicus proceeding, what limits surrounded those proceedings.

Mr. FROEHLICH. Would you say that these issues are insurmountable to any argument before the court?

Mr. JENNER. I would not say that it is insurmountable, no, sir.

Mr. FROEHLICH. Mr. Chairman, I think it is our job to use every possible way we can to get the information we think is relevant. We know that the tapes we have are tapes that were originally gotten by the Special Prosecutor. It seems to me it is in our interest and in the interest of the American people that we join in helping the Special Prosecutor get these tapes, because this is a way indirectly for us to get at them.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. We have heard the motion of the gentleman from Indiana well expressed by himself, and comments by both counsel, and Mr. McClory and others. We are still on item 1 of our five-point agenda today, and I do move the previous question.

The CHAIRMAN. The question is on the motion offered by the gentleman from Indiana, Mr. Dennis.

Mr. DENNIS. I ask for a rollcall vote.

The CHAIRMAN. The gentleman——

Mr. DENNIS. I request——

The CHAIRMAN. The gentleman demands rollcall.

Mr. DENNIS. It is not on the previous question, but when you get on the motion——

The CHAIRMAN. Well, the question is on the motion of the gentleman from Indiana. All those in favor say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

Mr. DENNIS. I ask for a rollcall vote.

The CHAIRMAN. The noes have it. A rollcall is demanded and the clerk will call the roll. All those in favor please say aye and all those opposed, no. This is on the resolution offered by the gentleman from Indiana.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.
 The CLERK. Mr. Brooks.
 Mr. BROOKS. No.
 The CLERK. Mr. Kastenmeier.
 Mr. KASTENMEIER. No.
 The CLERK. Mr. Edwards.
 Mr. EDWARDS. No.
 The CLERK. Mr. Hungate.
 Mr. HUNGATE. No.
 The CLERK. Mr. Conyers.
 Mr. CONYERS. No.
 The CLERK. Mr. Eilberg.
 Mr. EILBERG. No.
 The CLERK. Mr. Waldie.
 Mr. WALDIE. No.
 The CLERK. Mr. Flowers.
 Mr. FLOWERS. No.
 The CLERK. Mr. Mann.
 Mr. MANN. No.
 The CLERK. Mr. Sarbanes.
 Mr. SARBANES. No.
 The CLERK. Mr. Seiberling.
 Mr. SEIBERLING. No.
 The CLERK. Mr. Danielson.
 Mr. DANIELSON. No.
 The CLERK. Mr. Drinan.
 Mr. DRINAN. No.
 The CLERK. Mr. Rangel.
 Mr. RANGEL. No.
 The CLERK. Ms. Jordan.
 Ms. JORDAN. No.
 The CLERK. Mr. Thornton.
 Mr. THORNTON. No.
 The CLERK. Ms. Holtzman.
 Ms. HOLTZMAN. No.
 The CLERK. Mr. Owens.
 Mr. OWENS. No.
 The CLERK. Mr. Mezvinsky.
 Mr. MEZVINSKY. No.
 The CLERK. Mr. Hutchinson.
 Mr. McCLORY. Proxy, no.
 The CLERK. Mr. McClory.
 Mr. McCLORY. No.
 The CLERK. Mr. Smith.
 Mr. SMITH. Aye.
 The CLERK. Mr. Sandman.
 Mr. SANDMAN. No.
 The CLERK. Mr. Railsback.
 Mr. RAILSBACK. Aye.
 The CLERK. Mr. Wiggins.
 Mr. WIGGINS. No.
 The CLERK. Mr. Dennis.

- Mr. DENNIS. Aye.
 The CLERK. Mr. Fish.
 Mr. FISH. Aye.
 The CLERK. Mr. Mayne.
 Mr. MAYNE. No.
 The CLERK. Mr. Hogan.
 Mr. HOGAN. No.
 The CLERK. Mr. Butler.
 Mr. BUTLER. No.
 The CLERK. Mr. Cohen.
 Mr. COHEN. No.
 The CLERK. Mr. Lott.
 [No response].
 The CLERK. Mr. Lott.
 [No response].
 The CLERK. Mr. Froehlich.
 Mr. FROEHLICH. Aye.
 The CLERK. Mr. Moorhead.
 [No response.]
 The CLERK. Mr. Moorhead.
 [No response.]
 The CLERK. Mr. Maraziti.
 Mr. MARAZITI. Aye.
 The CLERK. Mr. Latta.
 Mr. LATTI. No.
 The CLERK. Mr. Rodino.
 The CHAIRMAN. No.
 Mr. WIGGINS. Mr. Chairman? Mr. Chairman, I have a proxy.
 The CHAIRMAN. The Chair recognizes the gentleman from California as voting the proxy of—whose proxy are you voting?
 Mr. WIGGINS. Mr. Moorhead's proxy.
 The CHAIRMAN. Mr. Moorhead voting aye?
 Mr. WIGGINS. No. No.
 The CHAIRMAN. Voting no, proxy.
 The clerk will report.
 Mr. WIGGINS. Wait, Mr. Chairman. He just walked into the room.
 Let him vote himself.
 The CHAIRMAN. The clerk will withhold. Mr. Moorhead.
 Mr. MOORHEAD. I vote no.
 The CHAIRMAN. The clerk will report.
 The CLERK. Mr. Chairman, 6 members have voted aye, 30 members have voted no.
 Mr. DENNIS. Mr. Chairman?
 The CHAIRMAN. The clerk has just reported. Mr. Lott.
 Mr. LOTT. Is it possible to vote at this time?
 The CHAIRMAN. The Chair will protect the member and accord him the privilege of voting at this time. That is his right.
 Mr. LOTT. Thank you, Mr. Chairman. I vote no.
 The CLERK. Mr. Lott votes no.
 The CHAIRMAN. The clerk will again report.
 The CLERK. Mr. Chairman, 6 members no, 32 members—excuse me, strike that; 6 members have voted yes, 32 members have voted no.

The CHAIRMAN. The motion is not agreed to.

I recognize the gentleman from California, Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I have a resolution at the desk that I would like the clerk to read.

The CHAIRMAN. The clerk will read the resolution.

Mr. WALDIE. Does the clerk have the second one that I distributed?

The CLERK. Yes, sir, Mr. Waldie.

Mr. WALDIE. All right. Please read that.

The CLERK [reading]:

By Mr. Waldie. Resolved, that the chairman be authorized and directed to file with the full House at such time as the Judiciary Committee shall make its final report to the House on the subject of the Impeachment Inquiry the following Resolution:

Whereas Richard M. Nixon, President of the United States has willfully and contumaciously refused, without legal excuse, to comply fully with a subpoena dated May 15, 1974, and issued under the authority of the House of Representatives to assist the House in the investigation of certain substantial allegations of high crimes and misdemeanors against the said Richard M. Nixon; now, therefore, be it resolved that the Committee on the Judiciary recommend to the full House that the Speaker shall cause the Sergeant at Arms to summon the said Richard Nixon before the Bar of the House to show cause why he shall not be held in contempt of the House of Representatives.

Mr. WALDIE. Now, Mr. Chairman.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Members of the committee, what I am seeking to do by this resolution is to do that which everyone seems to agree the President finds himself in with regard to his relations with this committee. He has held the committee in contempt by refusing to respond to the subpoena, and it would seem to me that to respond in any form less than designating his actions as what they are would be failing to express the will of this committee. I continually hear a suggestion on the part of members of the committee that what we must avoid is a constitutional confrontation. This President has subjected this committee to constitutional confrontations during the entire course of the proceeding. If the committee does not evince a similar will to confront the President when the President invites the confrontation, the President will be encouraged in the sort of conduct that he has expressed thus far in terms of this committee.

Our first response to the President when he held the committee in contempt by failing to respond to a subpoena was to send the President a letter informing him that he was in noncompliance. At that time it was suggested that that really was not much of a response, but it was believed that the President would not persist in that sort of contemptuous conduct toward the committee, and that in the future he, in fact, would begin to cooperate and respond to the authority that is lawfully vested in this committee.

The second opportunity we had to test that theory the President responded precisely as he had the first time, if possible with more contempt in terms of the committee's authority and process. This time, if I read the committee's letter, it is somewhat, but just so sublimely so, that it hardly bears reference, stronger than a letter of noncompliance. It suggests that if the President does not really start cooperating and obeying our authority that some of us may determine to do certain things some time, Mr. Chairman. It is my suggestion that what

has happened here is the President has held us in contempt, and his action shows that. If any other citizen of this country had done to this committee what this President has done, we would have found him in contempt.

I have qualified the resolution of contempt to comply with those who believe that we should not be diverted from the hearings of the committee to take up a hearing or an action on the floor of the House involving contempt by conditioning the time to report this resolution along with the date of the final report of the committee, which then would not in any way divert the attention of the committee to this particular action. But, it does have this, I think, positive result, it makes it very clear to the President that the committee considers his actions to be, in fact, in contempt of this committee. And I think the President needs to have that information conveyed him. The President, I think, needs to understand that this committee is as resolute in its determination to procure evidence in his possession.

And may I simply in closing ask a question of counsel, both counsel, Mr. Doar and Mr. Jenner. In your view, as attorneys for the committee, has the President, by his failure to respond to the committee, acted in such a way that legally the committee can find the President's conduct to have been in contempt of the committee and recommend it to the full House?

Mr. LATTA. Mr. Chairman? Parliamentary inquiry.

The Chairman. The gentleman will state it.

Mr. LATTA. The inquiry being that since counsel is not an elected member of this committee whether or not this is a proper question to present to counsel? This is a decision this committee is going to have to make and this House.

The CHAIRMAN. I do not believe that the gentleman was asking counsel to make a decision, but I think he was asking for a legal interpretation.

Mr. McCLORY. Mr. Chairman? Mr. Chairman, I would object to the question being posed to counsel. If I understand the question, he was not asking for a legal opinion. If he wants a legal opinion as to whether or not this is the common law, if this is the common law procedure, why that is one thing. It is. I think we can acknowledge that. I have already made that point before. But, whether it is a route by which this committee wants to go, or whether this is a decision which the committee wants to make is something that is solely in the prerogative of this committee and not within or under the jurisdiction of our counsel.

The CHAIRMAN. Will the gentleman rephrase his question?

Mr. WALDIE. Has the failure of the President to produce the tapes, documents and materials subpoenaed by the committee resulted in a contempt on the part of the President of the committee and of the Congress?

Mr. WIGGINS. Objection.

The CHAIRMAN. I think I will have to sustain the objection.

Mr. WALDIE. Let me phrase it again. You have heard the resolution that I am proposing. Would there be any legal objections on the part of either of you to the passage of the resolution by the committee?

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. In counsel's answer, since it is to me a legal answer to a difficult legal question, if you are prepared to give the answer at this time, I for one would be most interested in the authority and the authorities that you may wish to be able to cite on the question. If you wish to take it under advisement, that is up to you to decide. But, I expect you to back up your answer, if you are going to answer it at this time. Please go ahead.

The CHAIRMAN. This is coming out of the gentleman's 5 minutes. The 5 minutes are going to be up.

Mr. DRINAN. Mr. Chairman?

Mr. WALDIE. Well, if it is coming out of the gentleman's 5 minutes, he has not yielded then. Let me utilize the little bit more of my 5 minutes before he answers.

I do not understand the objection to asking counsel whether or not the President is in contempt by his failure to respond to the committee. Counsel has recommended a certain source of action to the committee which was the writing of a letter to the President. In the previous instance when the subpoena of this committee was not complied with by the President, counsel recommended that the committee find non-compliance on the part of the President. I don't know why we have counsel if we cannot depend upon them for advice as to whether certain acts of principals to this inquiry constitute certain legal conclusions. And it is a simple conclusion I have asked for. Has the President by his failure to respond to our subpoena committed an act that is in contempt of this committee?

Mr. HUNGATE. Would the gentleman yield briefly for a question?

The CHAIRMAN. I think that again I would have to sustain the objection of the gentleman since the question calls for a conclusion on the part of counsel.

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. And as such, I think that we will have to move on.

Ms. JORDAN. Would the gentleman yield to me?

Mr. WALDIE. Yes, I yield to Ms. Jordan.

Ms. JORDAN. Mr. Waldie, would you mind asking counsel what actions of a person subpoenaed to supply this committee with materials and things necessary to any inquiry this committee may ever conduct, what actions would constitute contempt?

Mr. McCLORY. Mr. Chairman, I would like to object to that as well, because that again, that again is a decision which only the committee can make.

Mr. WALDIE. All right.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. The Chair will have to sustain that objection.

Mr. WALDIE. Mr. Chairman, may I conclude my 5 minutes?

The CHAIRMAN. I recognize the gentleman for the balance of his 5 minutes.

Mr. WALDIE. And the balance of my 5 minutes will be concluded very quickly.

Mr. Chairman, I think all of us on the committee are lawyers. If we do not recognize contempt on the part of the President in his failure to respond to our subpoena and these actions, we are never going to

recognize contempt whenever we are confronted with it. This resolution permits us to determine, as attorneys on this committee, whether the action of the President in failing to respond to the subpoena, was, in fact, contemptuous. I submit, Mr. President, that the question is not a difficult legal one.

The CHAIRMAN. I recognize the gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I certainly understand the position made by the gentleman from California. I respect his position. I might say that personally I am not afraid of a confrontation. But, I think that in view of the hesitancy which we all sense on the part of counsel, on the part of all of us here, I would say that it is premature. We may very well have to act in the future after all of this is finished, and for that reason, Mr. Chairman, I move to lay on the table the motion offered by the gentleman from California, Mr. Waldie.

Mr. BROOKS. Mr. Chairman? Mr. Chairman, would the gentleman desist on that motion until the chairman has had an opportunity to recognize a couple of other people since the motion to lay on the table would cut off debate? Would the gentleman desist? Would I be recognized?

The CHAIRMAN. The gentleman has made a motion and the Chair—

Mr. BROOKS. I ask him to withhold the motion.

The CHAIRMAN. Will the gentleman withhold the motion?

Mr. MEZVINSKY. Yes, I can withhold the motion and I yield to the gentleman from Texas.

Mr. BROOKS. I would just like to say that I think that it is perfectly clear, and we don't need any counsel to tell us that the President has failed to comply with the provisions of the subpoenas that we have to date legally and with full accord of this committee submitted to him. We passed a noncompliance resolution after we discussed it at some length among the members and it was clearly understood then that everybody felt that the President was in contempt, technically in contempt of this committee by failure to honor that subpoena. And I recommended that we not use the word contempt, but that we use the word compliance, or noncompliance, and at that time we were able to get that passed.

Now, if the members of this committee feel that the President has been in compliance with our subpoenas, I don't know how they would reach such a conclusion. But, if they want to reach that conclusion they can. But, I for one want everybody to know that my hearing is not perfect, my eyesight is not perfect. I am getting a little age on me, and I don't hear as well and I don't see quite as well. But, I see well enough and I hear well enough to know that the President has not responded in any fair, decent, comprehensible way to this committee. And if you want to say he is in noncompliance, you will be accurate.

If you want to say he is technically in contempt of this committee, you would be accurate. I do not want any unnecessary confrontation, but there is nothing wrong with pointing out that his actions to date have been in contempt of this committee, and that the obvious alternative which this committee has, whether we so say or not, is to at a later date hold him in contempt. As Mr. Waldie suggests, as this committee would do any other person, to whom we had addressed such a

subpena. And I think that to defer, as we have already discussed in committee, the possibility of holding these noncompliance activities until we reach a final resolution of this impeachment matter, and to at that time either hold the President in contempt or not to, as we determine, was fitting and proper then. But, the fact situation would be there. The fact situation is there. This resolution with a statement that we can at a later date hold the President in contempt for his willfully refusing to meet the requirements of our subpoena is perfectly legal. It is just a reasonable thing. It says we at a later date may hold the President in contempt for obviously not doing what everybody in this room understands he did not do.

Mr. CONYERS. Will the gentleman yield to me?

Mr. BROOKS. I yield. I want to thank the gentleman from Iowa for giving me the opportunity to express a view that I really hated to have to do. It seems to be unnecessary.

The CHAIRMAN. The gentleman from Iowa has the floor and has a privileged motion and the motion is to table. And the question—

Mr. DRINAN. Will the gentleman yield?

Mr. RANGEL. Will the gentleman yield?

Mr. MEZVINSKY. I think that there are many members that want to debate it. I shall move again to lay the motion on the table by the gentleman.

The CHAIRMAN. The question is on the motion of the gentleman to table.

Mr. OWENS. Rollcall, Mr. Chairman.

The CHAIRMAN. A rollcall is demanded and the clerk will call the roll. All those in favor of the tabling motion please say aye and all those opposed, no.

Mr. CONYERS. Record vote, Mr. Chairman.

The CHAIRMAN. A record vote has been demanded.

The CLERK. Mr. Donohue.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Donohue.

[No response].

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.
 Mr. MANN. Aye.
 The CLERK. Mr. Sarbanes.
 Mr. SARBANES. Aye.
 The CLERK. Mr. Seiberling.
 Mr. SEIBERLING. Aye.
 The CLERK. Mr. Danielson.
 Mr. DANIELSON. Aye.
 The CLERK. Mr. Drinan.
 Mr. DRINAN. No.
 The CLERK. Mr. Rangel.
 Mr. RANGEL. No.
 The CLERK. Ms. Jordan.
 Ms. JORDAN. No.
 The CLERK. Mr. Thornton.
 Mr. THORNTON. Aye.
 The CLERK. Ms. Holtzman.
 Ms. HOLTZMAN. No.
 The CLERK. Mr. Owens.
 Mr. OWENS. No.
 The CLERK. Mr. Mezvinsky.
 Mr. MEZVINSKY. Aye.
 The CLERK. Mr. Hutchinson.
 Mr. McCLORY. Aye by proxy.
 The CLERK. Mr. McClory.
 Mr. McCLORY. Aye.
 The CLERK. Mr. Smith.
 Mr. SMITH. Aye.
 The CLERK. Mr. Sandman.
 Mr. SANDMAN. Aye.
 The CLERK. Mr. Railsback.
 Mr. RAILSBACK. Aye.
 The CLERK. Mr. Wiggins.
 Mr. WIGGINS. Aye.
 The CLERK. Mr. Dennis.
 Mr. DENNIS. Aye.
 The CLERK. Mr. Fish.
 Mr. FISH. Aye.
 The CLERK. Mr. Mayne.
 Mr. MAYNE. Aye.
 The CLERK. Mr. Hogan.
 Mr. HOGAN. Aye.
 The CLERK. Mr. Butler.
 Mr. BUTLER. Aye.
 The CLERK. Mr. Cohen.
 Mr. COHEN. Aye.
 The CLERK. Mr. Lott.
 Mr. LOTT. Aye.
 The CLERK. Mr. Froehlich.
 Mr. FROELICH. Aye.
 The CLERK. Mr. Moorhead.
 Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTI. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The clerk will report the vote.

The CLERK. Mr. Chairman, 27 members have voted aye, 11 members have voted no.

The CHAIRMAN. And the motion is agreed to. Mr. Fish.

Mr. FISH. Mr. Chairman, we have dealt along with this issue of how to enforce our subpoenas, and during the luncheon break I was authorized to repeat a conversation that a Member of Congress had with you and that was the gentlewoman from New York, Ms. Abzug, who told you of her offer to accompany the Sergeant at Arms down to the White House and collect the tapes.

The CHAIRMAN. I will respond at the appropriate time.

The next item on the agenda is the consideration of the issuance of additional subpoena authority to obtain materials necessary, and I recognize Mr. Doar.

Mr. RANGEL. Mr. Chairman, may I make an inquiry of counsel before—I mean, on this item on the agenda before—

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Thank you. Mr. Doar, as anxious as I am to obtain additional information so that we can complete this inquiry, could you tell me what authority if any, or what power, if any, we have to enforce any additional subpoenas we may issue?

Mr. DOAR. The power you have is included within the impeachment power, Congressman Rangel. It is a power to draw adverse inferences in connection with the material that is not supplied, or to include as an article of impeachment the refusals by the President to comply with the lawful subpoenas of this committee. You also have a power to hold the President in contempt.

Mr. RANGEL. So long as I am satisfied that we have the power, I withdraw any further questions.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, this morning we distributed to all members of the committee a justification memorandum setting forth the justification for the subpoenaing of 45 additional recorded Presidential or Presidential recorded conversations and also the subpoenaing of certain documentary material in the files of Mr. Haldeman, Mr. Ehrlichman, Mr. Colson, Mr. Dean, and Mr. Strachan. These materials were all contained in our letter of request to Mr. St. Clair of April 18 and some of them are also materials that have been subpoenaed by Mr. Jaworski in connection with the court case now pending, *United States v. Mitchell*.

The materials subpoenaed relate to conversations between November 15, 1972, and June 4, 1973, with all but one conversation between the period November 15 through April 26, 1973.

The justifications for these materials are contained in the paragraph below each item that we requested, plus the material that we have presented to the committee in the last five sessions of the committee

which were in executive session. Because that material was in executive session, we did not itemize it all, but I believe the committee would have the material well in mind.

For example, just to cite an example, without going through all of them, item No. 19 refers to a 6-hour meeting between the President and Mr. Haldeman on April 26, 1973. The justifications indicate that on the 25th and 26th Mr. Haldeman listened to recorded conversations between the President and some of his key aides, including the conversation on March 21, and took detailed notes of that conversation. So, information relative to that conversation was, as I say, presented to the committee in executive session.

Every one of these conversations, in the judgment of Mr. Jenner and myself, are necessary to the committee's inquiry. And it is for that reason that we now ask the committee to authorize the issuance of a subpoena for them.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Jenner, do you join in this recommendation?

Mr. JENNER. Yes, Mr. Chairman. Thank you. And in addition to the justification material we supplied you heretofore, which is repeated here, I wish to emphasize or supplement Mr. Doar's remarks, that in addition to that, of the 5 days of presentation that were made to you in each stage indicating to you in the annotation material the absence of information with respect to tapes in that particular item, and I cannot go beyond saying that because we have had those sessions in executive session.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. There was one conversation that we did not include in our letter of request, and that was item No. 8. But, material for that was developed in part in executive session. And also item No. 14, which is conversation between the President and John Dean on the 17th of April 1973.

The CHAIRMAN. I recognize Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I move that the Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, of a subpoena to be signed by the chairman, the text of which is at the desk and copies of which are now before the members of the committee.

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I would like to ask counsel a few questions if I might.

In the first place, I want to commend counsel on providing the committee during our sessions thus far with objective, fair, impartial evidence relating to the allegations that have been presented to this committee for inquiry. And I want to be sure that in connection with the subpoena which is now being recommended to the committee that we have this same objectivity in mind, that we are interested in providing information which may be favorable or unfavorable insofar as the President's interests are concerned. And there is not any, we have not taken any particular area that would be adverse to the President and just concentrated on that in any sense?

Mr. DOAR. No. But, we have taken—we have not done that, Mr. McClory. But, some of the material to justify this, some of the material does go to the question of involvement or lack of involvement, knowledge, or lack of knowledge, and so that we have selected things or

conversations that we thought would develop the proof of the case one way or the other.

Mr. McCLODY. This is for the purpose of clarifying, of providing more information, of resolving, of resolving discrepancies and conflicts that have appeared in the material that the committee has received?

Mr. DOAR. In some instances. In some instances they are to follow up leads that have come in connection that may tend to exonerate, and on the other hand may tend the other way, but it doesn't, it may open a new—it may bring more proof to the picture than we have had before, not just clarifying something.

Mr. McCLODY. Insofar as the evidence is concerned so far, the statements of information and evidence in support of them, is it your feeling that this would be the final request which would be directed to the White House for tapes and for other documentary material?

Mr. DOAR. With respect to the Watergate and the aftermath, to the best of my knowledge, yes, unless there was something new that developed.

Mr. SANDMAN. Would the gentleman yield for one question?

Mr. McCLODY. Yes, I yield.

Mr. SANDMAN. Mr. Doar, I posed this question before when we entered in the question of subpoenas. Do we know as of now whether or not these do exist?

Mr. DOAR. We have reasonable grounds to believe that all of them exist, except No. 1, and we do not know about No. 1.

Mr. RANGEL. Would the gentleman yield?

Mr. SANDMAN. Fair enough.

Mr. McCLODY. I am happy to yield to the gentleman from New York.

Mr. RANGEL. But it is possible, counsel, that the tapes are destroyed, so, therefore, we may not really know that they exist?

Mr. DOAR. Well, there has not been any indication of that.

Mr. RANGEL. Thank you.

Mr. McCLODY. I yield back the balance of my time.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, I have an amendment to the motion at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

By Mr. Wiggins. Motion to amend part A of the subpoena.

Following the word "conversations" at the end of paragraph A, page 1 of the schedule of things required to be produced pursuant to subpoena of the Committee on the Judiciary, insert the following: "To the extent that such conversations relate or refer directly or indirectly to the breakin, electronic surveillance of the Democratic National Committee Headquarters in the Watergate Office Building during May and June of 1972, and/or the investigation of that breakin by the Department of Justice, the Senate Select Committee on Presidential Campaign Activities, or any other legislative, judicial, executive or administrative body, including members of the White House staff."

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I thank you, Mr. Chairman.

First, ladies and gentlemen, I would like to call your attention to the general form of the subpoena. It is a two-part subpoena, part A and part B.

Part A, as you will see, refers primarily, if not exclusively, to tapes, dictabelts, and other electronic and mechanical recordings. Part B, on the other hand, refers to documentary evidence, all papers and things, particularly those files of Mr. Haldeman, Mr. Ehrlichman, Mr. Colson, and Mr. Dean.

Now, in part B, members of the committee, the staff has recommended a subpoena, which is limited. The subpoena of these documents is limited by the language "to the extent that such papers or things relate or refer directly or indirectly," and so forth. I am reading from part B of this subpoena. I wish to contrast that language with part A of the subpoena. Part A, on the other hand, asks for tape recordings essentially, within a time frame, but without reference to subject matter. I do not think there can be any dispute as to that fact.

Now, the justification for the tape recordings is not in the subpoena. It is a separate document. The justification makes it clear that the reason we seek these tapes is because we have reason to believe from other testimony that there is information on the tape which bears upon a proper subject of inquiry by this committee.

But, it is to be noted, Mr. Chairman, that the subpoena itself does not confine itself to this relevant material, but rather asks for entire conversations occurring between a given period of time.

This is obviously a matter of some concern to the President because in his letter of May 22, 1974, in the first paragraph he states: "Neither subpoena," referring to our two earlier subpoenas, "specifies in any way the subject matter into which the committee seeks to inquire."

My amendment, Mr. Chairman, is intended to meet that problem. It is a real problem. In fact, it is the genesis of the controversy we have had this morning because the President is asserting that portions of the material on these tapes is unrelated to Watergate, or at least in his view unrelated to any proper subject before this committee. My amendment seeks only to confine the subpoena for the tapes to the justification for those tapes, and it does so by borrowing the language used in part B, which has as its purpose an attempt to confine the subpoena to relevant material.

I believe the amendment is meretorious. If adopted, Mr. Chairman, it is apt to avoid many of the controversies and confrontations which have been created in the past as a result of our issuing subpoenas which on their face are over-broad. I urge the adoption of the amendment.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, considering the comments that have just been made, I think it is important to point out a couple of, I think, important considerations.

Part A, which deals with conversations, specifically identifies the conversations. Part B, which deals with documents, is unlimited as to time and therefore, it seeks to provide a limitation by talking about the subject matter in terms of the documents that we are seeking.

The justification for the conversations that has been furnished to the committee provides justifications that are beyond the language of your amendment. In others words, there is no reason to believe with these conversations that they do not pertain to certain matters within the scope of the inquiry of this committee clearly, but may well fall outside of the limitations which your amendment would set up. It

seems to me what has been presented to us is a reasonable attempt to limit a request for documents which is unlimited as to the time period. In other words, we ask for all documents in the files of certain White House staff pertaining to certain matters. The conversations on the other hand, are made specific because they pinpoint particular conversations and the justification for those conversations is provided. And an examination of the justification would indicate that it is not solely limited to what would be covered by the amendment that you had offered, and yet those matters are clearly within the scope of the inquiry of the committee.

Mr. WIGGINS. Would the gentleman yield?

Mr. SARBANES. Surely.

Mr. WIGGINS. The difficulty with the gentleman's argument is that relevance is not measured by time. Relevance is measured by subject matter. To simply confine our subpoena to a period of time is to permit the committee to obtain information, any information, which falls within that time. Now, that is beyond the power of the committee. My effort is to not confine in any way more restrictively than that used in part B which I take it to be an attempt on the part of counsel to broadly cover relevant material related to our inquiry.

Mr. SARBANES. Well, I understand that point. But, the reason it is included in part B is because there is no time limitation with respect to the request for documents, and part A, we have specifically provided limitations because we have identified the conversations that we are seeking. The justification provided for those conversations in the memorandum furnished to us includes matters not encompassed within the amendment offered by the gentleman from California, and yet matters that are clearly in the scope of the inquiry of this committee.

Mr. McCLORY. Would the gentleman from Maryland yield?

Mr. SARBANES. I would yield to the gentlewoman from New York.

Ms. HOLTZMAN. I thank the gentleman for yielding. I fully concur in the points that the gentleman from Maryland has made in opposition to Mr. Wiggins' amendment, and I would also like to point out that in response to our last subpoena, the President did not specify any objections with respect to relevancy. He flatly defied the subpoena and said that it would interfere with executive privilege. I do not know that specifying relevancy will in any way change the posture of the President that he has taken in the past. And I think that there is ample justification for these, for the way in which the subpoena has been drafted, and I think that the committee ought to approve it.

The CHAIRMAN. The time of the gentleman from Maryland has expired. Mr. Lott.

Mr. LOTT. Thank you, Mr. Chairman. I have a series of questions.

First of all I would like to address to counsel, is it your interpretation that the President or Mr. St. Clair's letter that we received only recently, and I do not recall the date, has specifically declined to turn over any of this material that is requested in the subpoena. Is that correct?

Mr. DOAR. The letter from the President specifically declined.

Mr. LOTT. All right.

Mr. JENNER. Irrespective of relevance.

Mr. LOTT. Do we have any transcripts on any of this material? I have just forgotten this really and I have not had a chance to check on it.

Mr. DOAR. No, we do not.

Mr. JENNER. We do not.

Mr. LOTT. Has there been any further discussion with Mr. St. Clair about the possibility of getting into any of this material, any sort of a compromise that maybe could be worked out, since the letter that has been received?

Mr. DOAR. No, there has not.

Mr. LOTT. Does any of this material relate to the ITT or milk matters?

Mr. DOAR. No, it does not.

Mr. LOTT. Thank you.

I would like to say, Mr. Chairman, in conclusion, that with relation to part B and the amendment that has been offered by Mr. Wiggins, I think that this is an important matter, and it is one that the issue of relevancy that we really have been discussing here all day, in my mind, in so many different areas, so I would like to speak briefly in behalf of Mr. Wiggins' amendment.

I think perhaps this is one move we can make to try to find a way to get out of this impasse that we are in.

Thank you.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Doar, several weeks ago it seemed to me we encountered the same problem. At that time I asked you a question as to whether or not if we simply attached a copy of the memorandum to the subpoena, whether that would not eliminate any ambiguity, any doubts, any questions in the White House mind or the President's mind about why we were after certain information.

I believe you indicated at the time, as I recall, that you would send it separately by letter, by hand somehow, and I simply raise the question again to the extent that there could possibly be any doubt in the mind of the President concerning the scope or intent of the information we are after, what harm would be done to the validity of the subpoena by simply attaching a copy of your memorandum with the subpoena itself. I would like your response on that also, Mr. Jenner.

Mr. DOAR. My response is the same response that I made to you 3 weeks ago with respect to this justification. I would see no objection to sending to Mr. St. Clair this justification, making it available to him. But I do not think that any language with respect to the recorded conversations limiting the subpoenaed material to relevant materials should be included, because I think that—

Mr. COHEN. That is not what I am saying. What I am saying is why can you simply not attach your memorandum which you are submitting to us for justification, which clearly sets forth the reasons and the time periods and so forth—why can that not go with the subpoena? Would it in any way invalidate the subpoena?

Mr. DOAR. I do not think it would in any way invalidate the subpoena. I would advise against it, however.

Mr. COHEN. Why?

Mr. DOAR. I think a subpoena should be a clean document. It should not have a lot of baggage and legal things on it, legal memorandums about it. I have no objection to giving it to Mr. St. Clair, but I think it would be a mistake for the committee to attach the memorandum to a subpoena.

Mr. COHEN. Mr. Jenner, could I have your opinion, please?

Mr. JENNER. Congressman Cohen, I share that. I am troubled with attaching a justification to the subpoena itself. I feel relatively strongly that the justification should be separate to Mr. St. Clair, especially since he has been sitting representing the President for the last 5 days when much of the material to which adversion is made, as you gentlemen and ladies now understand, justification for the subpoena. And it can be sent in the same envelope, but I am concerned that when you attach something to a subpoena, there is the inference legitimately to be drawn that you intend to affect the subpoena.

Mr. McCLORY. Will the gentleman from Maine yield to me for just a comment?

Mr. COHEN. I yield.

Mr. McCLORY. I thank the gentleman.

I would certainly support the sending of this justification. But I would also like to point out in opposition to the amendment offered by the gentleman from California that the amendment would seem to repose solely in the President the right to determine relevancy or nonrelevancy. I think that we should have and what we have proposed a number of times is a mechanism by which our counsel, as well as Mr. St. Clair, might screen materials which the White House might feel are irrelevant so that the committee could get the benefit of the relevant materials without impinging on national security or any of the other sensitive matters that the Executive might feel should not be included in the course of our inquiry.

The CHAIRMAN. I might advise the gentleman that should that amendment be defeated and the motion to issue the subpoena prevail, then the gentleman could very properly make a unanimous consent request that the justification material be attached.

Mr. COHEN. Mr. Chairman, I am simply trying to point out that we ought to remove, if there is any legitimate confusion as a result of the justification for it—and I have been told at least that we have been sending these to Mr. St. Clair, so he does have access. To the extent that there is even a reasonable or legitimate doubt in the mind of anybody, we ought to do what we can to remove that.

Mr. BROOKS. Mr. Chairman?

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Brooks.

Mr. BROOKS. This property that we are trying to get a chance to look at, of course, is the property of the United States as distinguished from many other subpoenaed materials. We want to remember that the system under which the committee would get such material would be for it first apparently—it is always edited down at the White House and part of it does not seem to have been recorded and there are deletions and there are various other editing transactions that go on down

there. When it comes to this committee by our committee procedures, the chairman and the ranking minority member and the two Republican counsel—we have two—they, together, listen and if there is anything that they think should be not put on the public tapes or made available to the committee, then it is cut out. If they have anything that is not relevant, not necessary, not pertinent, or if it is unnecessarily obscene, then they cut it out, because we are sensitive and tender. I think that really, we ought to remember that. We have cooperated pretty well on this basis.

Now, the facts are that Mr. Sarbanes made some excellent points, very well stated. I can say the same for Mr. McClory. The test as to whether we get something is whether it is necessary. Then we determine whether or not it is relevant. This is a matter for the committee to reach a judgment on. I think that it is quite obvious that this amendment looks fairly innocuous on its face, but basically, it is a limitation and a limiting of that material which we are requesting from the White House.

I do not think it is necessary; I do not think it is appropriate. Our existing procedures are adequate to protect anyone who is mentioned who should not be involved. I think it would be a mistake, I say directly to my friend, Mr. Cohen—I think it is most appropriate to make available to Mr. St. Clair and to the President, as we would, and as I am sure others might, since it is public knowledge now, the memorandum which defends in detail every request for a subpoenaed tape or document that we have. I think that it is perfectly appropriate for the President to receive that information, that memo; that is fine. But I do not think it should be attached as an integral part of the subpoena.

Now, I would say that the amendment, I believe, is undesirable, unnecessary, and inappropriate at this time and I would ask counsel if it is his feeling that this amendment is desirable or undesirable, helpful or unhelpful, and if so, in what manner.

Mr. DOAR. I feel the amendment is undesirable.

Mr. HOGAN. Mr. Chairman?

Mr. BROOKS. I yield the balance of my time.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Your time has expired. I recognize Father Drinan.

Mr. DRINAN. Mr. Chairman, I have no very strong objections to Mr. Wiggins' amendment, although it is probably unnecessary. But I want to avoid a deeply divided divisional vote here on partisan lines, simply because we now have a situation where the White House has denied 70 percent of everything we have asked for. If Mr. Wiggins and others can suggest that by putting in this restrictive language, we can get some of the tools that we need to work with, then I am not opposed to it.

I would like to ask, however, the counsel to give some specific reasons for consequences that might follow if we put in this restrictive language. Otherwise, Mr. Chairman, we will continue to have a Hamlet without Hamlet.

Mr. Doar, would you give us some specific adverse consequences that could follow if the Wiggins amendment were adopted?

Mr. DOAR. The consequence would be that you would leave to the President the judgment with respect to relevancy. Just as an abstract

matter, my position has been consistent and the committee's position has been consistent; it is for the committee to determine relevancy.

With respect to specifics, we have seen the problem with the edited transcripts of portions of the transcript omitted because they do not relate to Presidential actions. We have seen examples of situations where there are conversations, witnesses have testified to conversations that are not on the tapes. I think that this committee, in order to do a straightforward, clean job of getting all the material evidence, it is just essential that it not include in a subpoena such limiting language of relevancy.

Mr. DRINAN. The Wiggins amendment does say, Mr. Doar, that to the extent that such conversations relate or refer directly or indirectly to the break-in and so on.

Mr. DOAR. That gives to the President, his counsel, the judgment as to whether a particular conversation relates directly or indirectly.

Mr. DRINAN. Nonetheless, the President did speak very sharply in his letter of May 22 to the chairman about what, in his judgment, is an escalation of demands for material which, in his judgment, was irrelevant. Unless you feel that this is such an essential compromise that we are denying to ourselves the fundamental things that we need, I am wondering if some modification of the Wiggins amendment would be acceptable to the counsel.

Mr. DOAR. My view would be that with respect to the recorded conversations, you should ask for the conversation without any restrictive language, without any limiting language, because it is for the committee to determine relevancy.

Mr. DRINAN. I yield back the balance of my time.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I think the Wiggins amendment is meritorious and I cannot share the assessment that this would in any way be a limitation on the subpoena. We are asking for specific tapes of specific conversations. The Wiggins amendment in no way diminishes the number of conversations which we are requesting. What it does, however, it strengthens our justification for those conversations.

Now, I take issue with the gentlewoman from New York, who said that the President did not object to compliance on the basis of relevance. That might not have been his prime reason for defying the subpoena, but he did, in the first paragraph of his letter, say, and I quote:

Neither subpoena specifies in any way the subject matters into which the committee seeks to inquire. I can only presume that the material sought must be thought to relate in some unspecified way to what has generally been known as Watergate.

Now, what I think we are doing with the Wiggins amendment is eliminating all doubt as to why we need this information, that it does specifically relate to certain matters under the committee's jurisdiction, and I think it strengthens our justification and in no way diminishes what we are asking for.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I thank you, Mr. Chairman. I would like to ask counsel a question.

Sometime ago, in discussing our screening procedure, I believe it was indicated that there would be no objection if in the initial screening, when you and Mr. Jenner and Mr. Rodino and Mr. Hutchinson were doing that initial screening, I asked you the question if you would have any objection if Mr. St. Clair would also be permitted at least to sit in on the initial screening. I think you indicated at that time—I think the chairman did, too—that you would not have an objection. Would that be true in this case as well? In other words, when you do the initial screening?

Mr. DOAR. Yes, it would.

Mr. RAILSBACK. Let me just say, then, I do not find myself very often agreeing with the gentleman from Texas, my good friend, Mr. Brooks, but in this particular case, I really think that we have enough safeguards. We have enough safeguards and I personally like the idea of the Judiciary Committee doing the screening rather than the White House, frankly, in the light of some of our recent experience.

The CHAIRMAN. Mr. Latta.

Mr. LATTI. Mr. Chairman, I think we have had adequate discussion on this amendment. Everybody understands it, so I move the previous question.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California. All those in favor of the amendment please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

A call of the roll is demanded. The clerk will call the roll. All those in favor please say aye; those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

[No response.]

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.
 The CLERK. Mr. Danielson.
 [No response.]
 The CLERK. Mr. Drinan.
 Mr. DRINAN. Yes.
 The CLERK. Mr. Rangel.
 Mr. RANGEL. No.
 The CLERK. Ms. Jordan.
 Ms. JORDAN. No.
 The CLERK. Mr. Thornton.
 Mr. THORNTON. No.
 The CLERK. Ms. Holtzman.
 Ms. HOLTZMAN. No.
 The CLERK. Mr. Owens.
 Mr. OWENS. No.
 The CLERK. Mr. Mezvinsky.
 Mr. MEZVINSKY. No.
 The CLERK. Mr. Hutchinson.
 [No response.]
 The CLERK. Mr. McClory.
 Mr. McCLORY. No.
 The CLERK. Mr. Smith.
 Mr. SMITH. Aye.
 The CLERK. Mr. Sandman.
 Mr. SANDMAN. No.
 The CLERK. Mr. Railsback.
 Mr. RAILSBACK. No.
 The CLERK. Mr. Wiggins.
 Mr. WIGGINS. Aye.
 The CLERK. Mr. Dennis.
 Mr. DENNIS. Aye.
 The CLERK. Mr. Fish.
 Mr. FISH. No.
 The CLERK. Mr. Mayne.
 Mr. MAYNE. No.
 The CLERK. Mr. Hogan.
 Mr. HOGAN. Aye.
 The CLERK. Mr. Butler.
 Mr. BUTLER. Aye.
 The CLERK. Mr. Cohen.
 Mr. COHEN. No.
 The CLERK. Mr. Lott.
 Mr. LOTT. Aye.
 The CLERK. Mr. Froehlich.
 Mr. FROEHLICH. Aye.
 The CLERK. Mr. Moorhead.
 Mr. WIGGINS. Proxy, aye.
 The CLERK. Mr. Maraziti.
 Mr. MARAZITI. Aye.
 The CLERK. Mr. Latta.
 Mr. LATTA. Aye.
 The CLERK. Mr. Rodino.

The CHAIRMAN. No.

Mr. DANIELSON. Mr. Chairman, I ask unanimous consent to vote no.

The CHAIRMAN. The clerk will record the vote of Mr. Danielson.

The CHAIRMAN. Mr. Waldie?

Mr. WALDIE. I vote no.

The CHAIRMAN. Mr. Waldie no. The clerk will report the vote.

The CLERK. Mr. Chairman, 11 members have voted aye; 26 members have voted no.

The CHAIRMAN. The question now is on the adoption of the amendment by the gentleman from Texas, Mr. Brooks.

All those in favor, say aye; opposed, no.

A record vote is demanded. The clerk will call the roll. All those in favor, say aye; opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. McCLORY. By proxy, no.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. Aye.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.

The CLERK. Mr. Fish.

Mr. FISH. Aye.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. WIGGINS. By proxy, aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTI. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. The clerk will report the vote.

The CLERK. Thirty-seven members have voted aye, 1 voted no.

The CHAIRMAN. The motion is agreed to.

Does the gentleman seek to be recognized for a unanimous consent request, or was he reserving that right?

Mr. COHEN. No.

The CHAIRMAN. The gentleman from Utah is recognized.

Mr. OWENS. Mr. Chairman.

The CHAIRMAN. Will the gentlemen defer for just a moment?

The Chair feels that item No. 4 would properly take precedence over the item No. 3 in that there may be consideration of both, I think, and it is appropriate that we take up item No. 4 first.

Mr. OWENS. Mr. Chairman, I have a motion at the desk.

The CHAIRMAN. The clerk will report the motion.

The Clerk [reading] :

By Mr. Owens :

Motion to open evidentiary presentations.

Mr. Chairman, I move that the committee open to the public those remaining portions of its evidentiary presentation that do not encompass the introduction to the record of recordings of Presidential conversations or include material which the Committee, upon the recommendation of the chairman and ranking minority member, determine would impede the orderly administration of justice.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Has the clerk distributed copies of the motion?

The CLERK. Copies are being distributed at this time.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Chairman, the impeachment proceeding is so potentially divisive that some people think that the cure for abuse in office is perhaps worse than the illness itself. As I read the polls on impeachment, they say, in effect, that 30 million people in this country believe the impeachment proceeding to be a plot on the part of the President's political enemies and the media to drive him from office, and 80 million people believe that the President has committed impeachable offenses. I think it ought to be one of the goals of this committee to try to set the tone in the country as best we can, or by the manner that we conduct our hearings, to avoid 15 years of acrimony and bitterness. I think that this is a big argument for getting the original tapes, the best evidence; but it is also an argument for sharing the evidence with the public.

I think it is imperative that the committee conduct its business, both its hearings and its business, in the open, to show that the committee is proceeding impartially and in a nonpartisan manner, and hopefully decrease the misunderstanding of the proceeding. The public is entitled to see and to participate in what this committee is doing. Essential to us, I think, in obtaining these goals is that the public to the maximum extent possible should be presented the evidence simultaneously as it is presented to the committee. The rules, as the members know, and as we have discussed, require closing of the hearings if materials to be presented tend to defame or degrade, and the committee is aware of how procedurally that can be done.

I understand the reservations of different individuals, including, apparently, some of the Federal judges, that the action of this committee in this impeachment proceeding may prejudice the trials of Watergate defendants, both in a general sense and in some particular instances if any materials of a sensational nature should arise.

The motion is worded quite carefully, worked out by staff and in connection with the Parliamentarian of the House, to permit the committee to close the meetings if the chairman and the ranking minority member advise that the materials to be presented to the committee might impede the orderly administration of justice. So it gives us quite a bit of leeway if the committee decides, if the chairman and the ranking minority member advise that in some way, this material ought to be heard—could be prejudicial and therefore ought to be heard privately before it is released to the public at the close of the hearings, if the committee determines the materials could be released, or kept secret if that is the desire of the committee. We did

this, of course, in the hearings dealing with the confirmation of then Vice-President-designate Gerald Ford last fall.

But there is a very real benefit in addition which I think the committee ought to be interested in this opening up of these hearings. That is that the public will see as we proceed, as the committee has seen, the very real need for the best evidence, for the tapes, for other documents. It is a sad commentary to say that we must solicit, in effect, public support for our subpoenas and for our attempts to get at the best evidence, but that is the case that we have—that is where we have come to and it is necessary and I think that the public will insist and will understand and then insist that we have the best evidence. It is regrettable to say that I think public pressure is all the President has responded to in the past and if we are to get any further evidence through this stonewall, it will come because of public pressure.

There is, as the committee knows, broad bipartisan support for opening the hearings. The Vice President recommended again last night that we do it and the President's counsel, were he here and permitted to speak, I assume would reiterate what he has said in the past. I think, Mr. Chairman, that we ought to move to open these hearings, being sensitive, of course, to close them at such times as the committee decides it might be prejudicial.

Mr. McCLORY. Will the gentleman yield?

The CHAIRMAN. The time of the gentleman has expired. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I am very reluctant to criticize the motion which the gentleman from Utah has offered. However, I would like to observe that we are still in the initial presentation stage of this inquiry and we have been making excellent progress. It has been done in a very responsible way and it has been very informative as far as the committee is concerned. I would hesitate to have us take some action now because of what the polls may indicate or that we project what the limited polls have indicated, and respond to that. We are going to have open hearings at an appropriate time. The hearings have been held behind closed doors so far in response to the rules of the House and the action taken. I am not aware of any change that has occurred.

We are going to take up in the next stage of our inquiry the subject of the Plumbers, ITT, the milk fund, a number of items, on which people are either under indictment or awaiting trial, and in which their cases may be very seriously and adversely affected.

We have received a great deal of material under a rule of confidentiality which we adopted in advance and the court knew that we had that rule of confidentiality, the grand jury knew that we had that rule of confidentiality, the Armed Services Committee knew that we had it. And that is the basis upon which we received it.

Now, the only basis upon which I could support a motion—not this motion, but support a motion—would be one which would require the separation of the evidence which we are going to receive in the course of this initial inquiry—this initial presentation—and I think that would be practically an insurmountable task insofar as our counsel and our staff are concerned. If it were possible to do that, yes, we could have open hearings with respect to the subjects that are in the

public domain. But to have open hearings with regard to grand jury transcripts, with regard to other materials which we received in confidence, it would seem to me, would be a violation of our responsibility and it would not do any honor or bring any respect on this committee. That is why I am very reluctant to—I hesitate to oppose this, but I think on the basis of the form of the motion, I would have to.

Mr. OWENS. Would the gentleman yield?

Mr. McCLODY. I would be happy to, yes.

Mr. OWENS. I might just clarify my point on polls. It did not go to the question of whether we should open the hearings or not. It went to the question of the divisiveness in the country as an argument for why the country ought to be involved. But second, I would point out to the gentleman the final two lines of the motion are intended, and I thought I made clear in my introductory remarks, obviously materials which are confidential, materials which might tend to defame or degrade would first, under the House rules, have to be heard in secret session, and then only such materials as the committee decided were relevant or ought to be made public would be made public. I submit to the gentleman, the protection that he asks for is in the motion.

Mr. McCLODY. Let me say this, that the rules under which we are proceeding are rules which do protect individuals from, against the opening of our hearings. I do not think the chairman or Mr. Hutchinson, that it would be possible to review in advance all of the evidence that was going to be presented in order to determine whether or not it would or might be apt to defame or degrade. I think we should—I frankly do not feel we should act on this today or at this time. I think that it requires a great deal of thought, a great deal of consultation with our counsel and with our staff to determine what mechanics can, if any, can be worked out in order to partially open up the hearings in the future.

I yield back the balance of my time.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I would like to address an inquiry to the chairman. It is my understanding that we probably are proposing to release at the end of the ITT hearing and the milk hearing the documentation that has been presented on the day of the presentation. If that is the case, we would exclude from it any tapes that we would hear and we would probably, as I understand it, hear the tapes possibly in a secret session and maybe at the end of the day, release the transcripts if the committee felt that there was nothing unwarranted in those transcripts. Now, if we are going to do that without jeopardizing—I wish, Mr. Doar, you and Mr. Jenner would be aware of this. If we are going to follow that procedure without jeopardizing the presentation, could we not, as under Mr. Owens' recommendation, release it as we go without jeopardizing the presentation?

Mr. CHAIRMAN, if counsel would care to reply to that.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I think the problem is releasing it as you go, if you mean by that having it in open hearing, is that you do not have a chance to listen to it first before you decide to release it. I think at this

particular time, Congressman Brooks, for several weeks, the committee might want to listen to the material in executive session and then make a decision whether to release it at the end of the day.

Mr. BROOKS. You mean the material in addition to the tapes.

Mr. DOAR. In addition to the tapes, yes.

Mr. BROOKS. The written material that is submitted as well?

Mr. DOAR. Yes, sir.

Mr. BROOKS. You think the committee members might wish to consider before they make a determination as to releasing it?

Mr. DOAR. Yes, sir: I do. I think that in this period, there are some pending cases that I think, in view of the pending trials, or a pending trial, that it might be well if the committee would proceed in that way so that they could examine the material and consider whether or not the release would in any way, shape, or form give rise to an accusation that this committee was trying to create some adverse pretrial publicity.

Mr. BROOKS. And we would not anticipate having many more days of this type of presentation, at any rate?

Mr. DOAR. No, we would not.

Mr. BROOKS. We anticipate 2 or 3 days next week?

Mr. DOAR. I would say that it is a total of 4 to 5 days.

Mr. BROOKS. Total?

Mr. DOAR. Total.

Mr. BROOKS. At the end of which time, we would probably be in a position to release all of that material?

Mr. DOAR. Well, release it on a particular day we make the decision to do it, yes.

Mr. HUNGATE. Would the gentleman yield?

The CHAIRMAN. The time of the gentleman has expired. Mr. Hungate?

Mr. HUNGATE. I would like to inquire of the gentleman from Utah—I commend him on offering this motion. Certainly the best evidence is what we seek and what we need. The tapes constitute the best evidence. Getting it to the public would seem to be in the public interest. If I have read correctly and if it is reported correctly, the counsel for the President, Mr. St. Clair, has indicated no objection to going public and to having the tapes played publicly. I think that would be splendid if it were played after the hours children are normally in bed.

I notice in the gentleman's motion that he does not encompass the introduction in the record of recordings of Presidential conversations and I wondered why that was excised?

Mr. OWENS. Upon the advice of our distinguished counsel that we first—and I think it makes sense to hear those recordings first, given rule 11, which provides that materials which might defame or degrade must be heard first in executive session.

Mr. HUNGATE. There is another part to that rule, I think.

I thank the gentleman very much.

Mr. WIGGINS. Mr. Chairman?

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman, for recognizing me.

I do not think that the motion of the gentleman from Utah sufficiently protects the very important criminal proceedings which are underway. He has said that he assumes that secret grand jury testimony would not be presented at these open sessions, but I think this should be spelled out very precisely. The Government has gone to great difficulty to prepare the prosecution in these cases. Certainly, this committee should not take any action to jeopardize the thorough and successful prosecution of those charged with crimes. Similarly, it should not do anything to jeopardize the full defense of the defendants in those cases.

It seems to me that should be foremost in our mind at all times, that the judicial process should be permitted to proceed to its relentless conclusion unimpeded.

Now, the other reason for my objecting to this motion is that I do not think that from an administrative standpoint, it is practical. I cannot envisage how this committee is going to be able to go into an in-again, off-again procedure in which we meet for a few hours and say, this is going to be in public session, but now we are coming up to something that may have confidential material in it, so we are going to have to clear the room and go into private session.

I regret that I cannot agree with the gentleman from Illinois, Mr. McClory, that we have been making excellent progress. I think our progress has been slow. We have had only 1 day, not even a full day, of presentation of evidence this week. The staff apparently ran out of steam or material at 4 o'clock yesterday. Last week, the staff had to suspend because it had run out of material and presentation of evidence—I believe it was about 4 o'clock in the afternoon. We have not had more than 3 days of presentation of evidence in any week. It seems to me we should be having evidence on more days and proceeding more expeditiously, and I think that staff has enough problems with getting the matter organized and the evidence assembled without putting this additional burden on its back of having to sort out what is going to be in public session and what is going to be in closed session. It just seems to me that would slow things down and what we want to do is to be speeding them up and getting this matter decided rather than delayed.

Thank you, Mr. Chairman.

Mr. MARAZITI. Mr. Chairman?

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. I recognize Ms. Jordan.

Ms. JORDAN. I am almost persuaded after reading the motion of the gentleman from Utah that it would be better to continue in executive session than to have this motion before us. I think the effect of it will be to present the public with a rather sanitized, cosmetic, laundered hearing, which is not going to serve the ends of justice, whether those ends of justice inure to the benefit of the American people or to the President.

I would think, Mr. Chairman, that in spite of the unique competence of you and the ranking minority member, you do not have the competence to decide when the ends of the administration of justice will be served by virtue of what is heard before this committee. My judgment, Mr. Chairman, is that we ought to either open these hearings or close them and this motion does neither.

Mr. WIGGINS. Mr. Chairman?

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, I shall not take long.

Mr. Chairman, I oppose most earnestly this motion. It is wrong. It is wrong technically, in my opinion, because it is too narrowly drafted, and it is wrong fundamentally.

First of all, with respect to my technical objections, if the members will refer to the amendment, it permits an exception from the open presentation of evidentiary materials in two cases only: One, recording of Presidential conversations; and two, in those cases where the chairman and ranking minority member agree that it would impede the orderly administration of justice.

Well, if we reflect back upon the materials presented to us, we have had materials with classified stamps on the material, which I take it would not be covered by the orderly administration of justice; we have had grand jury materials which may or may not affect the orderly administration of justice. We have had irrelevant materials presented to us, materials which will be finally unpersuasive to many of us and will not form the basis of an impeachment proceeding. The amendment is much too narrowly drafted for those reasons. But let me speak primarily, Mr. Chairman, to a more fundamental objection.

We speak and demonstrate proper concern for Watergate defendants and not to prejudice their trial. But let me say that far more important is that we not prejudice a possible trial of the President of the United States in the Senate. If we permit an open presentation of evidentiary materials at the investigative level, there is the great risk that the trial of the President of the United States in the Senate would be prejudiced thereby. This is a classic confrontation which occurs frequently, which is the public's right to know and the right of fair trial, and lawyers in particular have resolved that question historically in terms of a fair trial.

Mr. HUNGATE. Would the gentleman yield?

Mr. WIGGINS. Yes.

Mr. HUNGATE. I am confused, because I think I have understood the Presidential counsel, Mr. St. Clair, on various occasions to say he wants to go public. Am I in error on that?

Mr. WIGGINS. No, you are not in error and Mr. St. Clair is confused. We want to be sure we give due process to all persons in this country, including the President of the United States. I can give many, many illustrations of material presented to our committee which will not form the basis of an impeachable offense but which will be damaging to the President if placed in the public domain. I would hope this proposal will be defeated on the fundamental question of the President's right to due process.

I move the previous question.

Mr. SEIBERLING. Will the gentleman withhold for a moment and let someone else say something?

The CHAIRMAN. The previous question has been moved. Will the gentleman withhold for a moment?

Mr. WIGGINS. Of course.

The CHAIRMAN. Mr. Seiberling.

MR. SEIBERLING. Mr. Chairman, I strongly support the objective of this motion by Mr. Owens, but I do think that it is defective in several respects from a technical standpoint.

For example, it does not make an exception for the fact that we might be introducing into the record under this, if this motion passes, material which was obtained from other committees in sessions that were executive sessions and under the rules of the House, only those committees could release that material. I think that it would be desirable if the gentleman could withdraw this motion and permit the staff and other members to spend a little more time working on a motion to accomplish this objective, which would not meet some of the really significant technical questions that have been raised.

I yield to the gentleman from Utah.

MR. MARAZITI. Mr. Chairman?

MR. OWENS. I will say to the gentleman that the staff did work a great deal of time on this motion as well as the Parliamentarian and it was felt that the words which limit the introduction into the record of any materials which the committee determines upon the recommendation of the chairman and the ranking minority member might impede the orderly administration of justice, obviously allows us to keep secret any materials that this committee decides ought to be kept secret. Now, there will be materials which will come to us, of course, from other committees. We may have to open those up if it is relevant to open those up. We will follow procedures in that. The amendment is broad enough in my judgment and in the judgment of the staff to cover that. But if the gentleman has an amendment, I will be happy to entertain it. Or he may be able to prevail on it.

MR. SEIBERLING. I would suggest that the gentleman consider an amendment and I would be prepared to offer one which would add at the end of the language "or which otherwise would violate the rules of the House." I so offer that amendment and ask unanimous consent.

MR. OWENS. Which otherwise in the determination of the committee—

MR. SEIBERLING. After the words "would impede the orderly administration of justice", I would add the words "or would otherwise be in violation of the rules of the House of Representatives."

MR. OWENS. Would the gentleman insert the words "in the judgment of the committee"? I would be happy to entertain that.

MR. SEIBERLING. I think that is covered by the preceding line.

THE CHAIRMAN. The Chair would like to advise the gentleman from Ohio that the amendment which he would offer is actually frivolous, since it is always the rule of the House that any action that we take must comply with the rules of the House.

MR. SEIBERLING. Well, I do not want to do anything frivolous, Mr. Chairman. Therefore, I will not—I withdraw the amendment.

THE CHAIRMAN. The Chair will try to recognize each member seeking recognition, though time is fast fleeting. The Chair is going to recess this meeting at 4:15 if we do not come to a vote. Mr. Rangel.

MR. RANGEL. I would like to commend the mover of this motion and just direct some of my remarks in connection with Mr. Wiggins and the rights of the President.

It seems as though the Constitution provides that the Congress and the Judiciary conduct our inquiry. If the President's counsel is wrong, we fought desperately hard for him to enjoy that unique position within our committee to protect the President's rights.

As relates to the rights of those people that are on trial or will be on trial, I cannot conceive of anything that has been more damaging to their rights to a fair trial than the President on his own releasing the edited transcripts.

I think this committee has tried to be fair. We have had the same problem the President has had in trying to balance protecting people as well as protecting the people's right to know. I do not see how, with the protections that are already provided within the motion, anyone can be more adversely affected than they have been by the President's issuing his transcripts. So I support the motion and turn back the balance of my time.

Mr. MARAZITI. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman. I want to concur fully with what the gentleman from California, Mr. Wiggins, said in arguing against this motion. But I want to make two additional points. One is during our evidentiary hearings, we have heard unrelated, non-germane information. If all of that material were made public, I think it would be highly prejudicial.

At the time when we decide to release material, I think what we release should be restricted to what is specifically germane to possible impeachable offenses. Much of the material that we have received has not been in that category.

Secondly, I will point out to the members that if any part of our hearings are to be open to the public, they may also be televised. So I will vote against the Owens motion.

Mr. MARAZITI. Mr. Chairman?

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Just a couple of quick questions.

As I understand it, Judge Gesell is concerned about the release of any material that might at this time increase the chance of precluding a fair trial for those individuals coming up for trial on June 17, is that correct?

Mr. JENNER. That is correct. Not only for material that has been described here as confidential, grand jury material and otherwise. But Judge Gesell and any fine Federal judge, and they are all fine, is concerned about repeating that which is already in the public, and the public mind has been lessened because time has passed. If you repeat things just on the eve of trial, then the judge is faced with a problem of obtaining a fair and impartial jury.

Mr. COHEN. He would like enough time at least to have a jury drawn and then sequestered, is that correct?

Mr. JENNER. That is correct.

Mr. COHEN. I also understand that Judge Gesell is now considering whether he will consider dismissing cases against those pending to stand trial in June because of the White House refusal to turn over evidence which the defense considers necessary, is that correct?

Mr. JENNER. That is correct.

Mr. COHEN. And he is going to have a hearing on it today?

Mr. JENNER. I think he had it this morning.

Mr. COHEN. I think these men should be brought to the bar of justice and I do not think this committee ought to take any action today which will give the court any additional reason for dismissal of those cases by the action of this committee. I think if the court is going to dismiss it for reasons of noncompliance by the White House, it should do it and I do not think we should assume any blame for their not coming to the bar of justice. I think for that reason, we ought not to open the hearings and I oppose the motion on that basis.

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Mr. Chairman, I will support the motion. I think we also ought to play the recordings of the Presidential conversations, because I think they are very relevant. I think we can have sufficient protection in that regard by the latter part of the resolution, which will give the chairman and the ranking member the authority to determine whether the orderly administration of justice would be impeded and therefore prevent the playing of the tapes.

I think there is sufficient protection—there certainly is included in this resolution protection against prejudicing the rights of any defendants. This is public business. The public has a right to know. I think the sooner that we have public hearings, the better.

Mr. DRINAN. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. With great reluctance, I am going to oppose the motion made by the gentleman from Utah, and I do it with regret, because I think that wherever possible, we should go public. But this entire inquiry that we are engaged in has to do with public servants allegedly violating rules and the law. This proposal made by the gentleman from Utah is a proposal to ignore House rules that have been worked out over many decades.

I was reading a debate the other day where Judge Smith of Virginia, hardly a left-winger, was floor leader when this rule 11.27 was adopted. He put forth some very good, basic, sound rules having to do with the rights of privacy of third parties that made this rule necessary in the House of Representatives.

What we are saying now, or what this motion is saying now is that because impeachment is so important, because people want us to go public so badly, and the media is interested in it, that we should therefore violate rule 11.27.

Now, this rule says this: That a witness' testimony before a House committee, if a witness' testimony may tend to defame, degrade, or incriminate a third party, the committee must first hear the witness in a closed session. That is very clear. And this would eliminate that rule.

No, I will not yield.

I do not know of anything in the House rules or in any rules of constitutional procedures that licenses a retreat to the old days just because we are engaged in a very important impeachment inquiry now. On the contrary, I would suggest that we should go the last mile in being scrupulous where the rights of third parties are involved.

Now, Mr. St. Clair can come in and say he can waive the rights of the President. That is perfectly all right. He probably has the right to waive the rights of the President with regard to testimony that incriminates, defames, or degrades him. But there are dozens of other third parties who can be defamed, degraded, or incriminated and who have been in the presentations made to date.

Mr. OWENS. Will the gentleman yield very briefly on that?

Mr. EDWARDS. Yes, I will.

Mr. OWENS. The gentleman is a lawyer and he knows that by a motion before this committee, one may not waive the rules of the House of Representatives at all. This committee is going to come face to face with trying to enforce rule 11.27(m) and it is going to have to face it, because the subsequent provisions of that amendment, of that rule are going to be very tough to enforce. Those that require that any person may tend to be defamed—that person has to be called in.

Mr. EDWARDS. I would yield—

The CHAIRMAN. The Chair ought to advise the committee that there is a rollcall vote on. The gentleman still has the floor.

Mr. EDWARDS. May I complete in just a moment, Mr. Chairman.

I do understand what the gentleman from Utah has said. I think the motion should be further down the road. I think it should be worked out, but not at this time. I think it is premature.

Mr. Chairman, I move that the motion of the gentleman from Utah be tabled and that the committee then proceed to do its other business.

Mr. OWENS. On that I ask a record vote, Mr. Chairman.

The CHAIRMAN. The question is on the motion to table the motion of the gentleman from Utah. All those in favor of the motion, please say aye; opposed, no.

A rollcall vote is demanded. The clerk will call the role. All those in favor, please say aye, those opposed, say no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.
 The CLERK. Mr. Danielson.
 Mr. DANIELSON. No.
 The CLERK. Mr. Drinan.
 Mr. DRINAN. No.
 The CLERK. Mr. Rangel.
 Mr. RANGEL. No.
 The CLERK. Ms. Jordan.
 Ms. JORDAN. Aye.
 The CLERK. Mr. Thornton.
 Mr. THORNTON. Aye.
 The CLERK. Ms. Holtzman.
 Ms. HOLTZMAN. No.
 The CLERK. Mr. Owens.
 Mr. OWENS. No.
 The CLERK. Mr. Mezvinsky.
 Mr. Mezvinsky. No.
 The CLERK. Mr. Hutchinson.
 Mr. McCLORY. Aye by proxy.
 The CLERK. Mr. McClory.
 Mr. McCLORY. Aye.
 The CLERK. Mr. Smith.
 Mr. SMITH. Aye.
 The CLERK. Mr. Sandman.
 Mr. SANDMAN. Aye.
 The CLERK. Mr. Railsback.
 Mr. RAILSBACK. Aye.
 The CLERK. Mr. Wiggins.
 Mr. WIGGINS. Aye.
 The CLERK. Mr. Dennis.
 Mr. DENNIS. Aye.
 The CLERK. Mr. Fish.
 Mr. FISH. Aye.
 The CLERK. Mr. Mayne.
 Mr. MAYNE. Aye.
 The CLERK. Mr. Hogan.
 Mr. HOGAN. Aye.
 The CLERK. Mr. Butler.
 Mr. BUTLER. Aye.
 The CLERK. Mr. Cohen.
 Mr. COHEN. Aye.
 The CLERK. Mr. Lott.
 Mr. LOTT. Aye.
 The CLERK. Mr. Froehlich.
 Mr. FROEHLICH. No.
 The CLERK. Mr. Moorhead.
 Mr. WIGGINS. By proxy, aye.
 The CLERK. Mr. Maraziti.
 Mr. MARAZITI. No.
 The CLERK. Mr. Latta.
 Mr. LATTI. Aye.
 The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The clerk will report the vote.

The CLERK. Mr. Chairman, 23 members have voted aye, 15 have voted no.

The CHAIRMAN. The motion to table is agreed to.

The committee will recess until 10:30 tomorrow morning.

[Whereupon, at 4:07 p.m., the committee recessed to reconvene at 10:30 a.m., Friday, May 31, 1974.]

IMPEACHMENT INQUIRY

Business Meeting

FRIDAY, MAY 31, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 11 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Thornton, Holtzman, Mezvinsky, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, and Froehlich.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

Before we go on with the remainder of the agenda, I would like to ask Mr. Doar to advise the committee regarding his discussions with Mr. St. Clair.

Mr. DOAR. Mr. Chairman, members of the committee, your letter to President Nixon was delivered to the White House last night. Mr. St. Clair had asked me the last day of our hearings if he could come up and talk to me about several matters. He arranged to come up this morning at 9 o'clock. At that time, he accepted service on the committee's subpoena which was authorized and issued yesterday. I gave him in detail the information that the committee had requested from Commissioner Alexander of the IRS in connection with the audit of the President's income tax returns for the years 1969 through 1972. Mr. St. Clair promised to consider whether or not that information could be made available. That would be the audit and the supporting papers, an earlier audit, and a letter if there was one advising the President that the subsequent audit would be made. These papers, in our judgment, are all essential for the committee to have in evaluating that area of our inquiry involving the President's personal finances.

(971)

Mr. St. Clair also advised me that that portion of the April 4 tape relating to ITT had been transcribed and was now being reviewed at the White House and that we would receive an edited transcript of a portion of the April 4, 1972, tape relating to the ITT matter.

I asked Mr. St. Clair what was the status of our request for the portion of the March 17, 1973, tape relating to Watergate. The committee members may remember that the edited transcript related only to the Ellsberg matter. Mr. St. Clair said that that was not furnished because he was under the impression that that was all that the committee had wanted and he had not had a chance to check to see what was on the balance of that tape, but would do so and would advise the committee. I also asked him if he would make available voluntarily or as the result of a request the remaining portion of the conversation with John Dean on September 15, relating to discussions involving the IRS. Committee members may know that Mr. Jaworski has asked for this material. In my judgment and Mr. Jenner's judgment, this material is necessary to the committee's inquiry, and it would appear that Mr. St. Clair has indicated that he expected that, although he had no authority to speak for the President and he makes that clear every time that we talk, that he expected that that material would not be furnished. I think under those circumstances, it would be appropriate for Mr. Jenner and me to present a letter to the chairman and the ranking minority member for their approval requesting of Mr. St. Clair that we be furnished the last 17 minutes of the conversation with Mr. Dean on September 15, 1972.

That essentially covered our conversation with Mr. St. Clair this morning.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Doar, was there any indication from Mr. St. Clair as to the time when we would hear from him and from the President regarding when and if we would receive any of the work papers from the Internal Revenue Service regarding his tax returns?

Mr. DOAR. No, there was no commitment, but my impression was, my clear impression, that we would hear promptly.

Mr. MEZVINSKY. I would hope and urge that we would hear promptly. When we find, we read in the newspaper about 5 percent negligence assessments and we in the committee do not even know about it or have those reports, I think it is an affront and an embarrassment to the committee.

I would also ask was there any indication from Mr. St. Clair that the President himself could waive the right and provide all these papers to us rather than forcing the committee to either ask the Joint Committee or have a special resolution? Is that the point that is now under discussion?

Mr. DOAR. Yes, that is. It is the President giving this information to the committee voluntarily; yes, that is.

Mr. MEZVINSKY. And it is all the workpapers, it is all the investigation that was done by the Internal Revenue Service; it is the letters that were sent to the President whether or not he was reaudited—is that it? Or is it simply—

Mr. DOAR. No, all those materials were asked for.

Mr. MEZVINSKY. OK, very good.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I just want to ask a question for clarification.

As I understand it, we do not presently have the tape of the September 15, 1972, conversation between the President and Mr. Dean, the last 17 minutes of that tape?

Mr. DOAR. No, this was one of the tapes that was furnished to the court under the subpoena in *Nixon v. Sirica*. Judge Sirica listened to the conversation, which ran from 5:27 to 6:15 or 6:17. Judge Sirica permitted the Special Prosecutor to listen to all but the last 17 minutes of that because he held that the last 17 minutes did not relate to Watergate.

There is in that memorandum that was prepared by Mr. Thompson from notes that he made at the time he talked to Mr. Buzhardt, Mr. Buzhardt indicated that the President and John Dean discussed matters relating to IRS during that conversation. Mr. Dean testified that the President and Mr. Haldeman and he discussed those matters.

Mr. McCLORY. Has the White House provided us with an edited transcript of that meeting?

Mr. DOAR. No, they have not.

Mr. McCLORY. And of course, there would be two sources for getting this, would there not, the court and the White House?

Mr. DOAR. Well, that is right, the court and the White House. The court has indicated that it does not feel that it is appropriate for it to deliver the material to us, that we would have to get it from the White House.

Mr. McCLORY. Thank you.

The CHAIRMAN. I will only recognize members who are going to address questions to counsel relating to the information that was given to us by Mr. St. Clair. That is the purpose of the recognition. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. Doar, you referred to a conversation you had with Mr. St. Clair about the March 17 tape that we had requested. Was that a tape of a conversation between the President and Mr. Ehrlichman?

Mr. DOAR. No, it was not. It was a conversation between the President and Mr. Dean.

Ms. HOLTZMAN. And our subpoena called for the entire conversation?

Mr. DOAR. Our subpoena called for the entire conversation.

Ms. HOLTZMAN. And Mr. St. Clair said to you that he did not understand that the subpoena called for that entire conversation?

Mr. DOAR. Mr. St. Clair said that he thought that what we were asking for in that conversation was conversation between the President and Mr. Dean with respect to the Ellsberg matter.

Now, when we talked to Mr. St. Clair initially with respect to that tape, the only information we had, or the specific information, was that they had discussed the Ellsberg matter on that date and early on, we had indicated that. But in our letters, we had made it clear that we wanted everything that related to Watergate, the President's knowledge or lack of knowledge. In the course of our subpoena, we did not limit it at all.

Ms. HOLTZMAN. Thank you very much.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Just a point of information. Mr. Doar, when you handed Mr. St. Clair the subpoena this morning, did you give him a copy of your memorandum that you submitted to the committee yesterday?

Mr. DOAR. By gosh, I did not do that.

Mr. COHEN. Would you see that he also gets a copy of that?

Mr. DOAR. Yes, I will.

Mr. COHEN. So it will remove any question about the purpose, the relevancy, and the need for those documents by this committee?

Mr. DOAR. I will do that forthwith.

Mr. COHEN. Thank you very much.

The CHAIRMAN. The agenda for the meeting had listed on it as item No. 3, "Release to the public of impeachment inquiry materials received in executive session to date." Yesterday, we passed it over temporarily. I would like to address myself to that item.

As members are doubtless aware, under clause 27(o) of rule 11 of the rules of the House, evidence or testimony taken in executive session may not be released or used in public sessions without the consent of the committee. I have discussed this matter very closely with counsel and it would appear to me that the committee is not in any position at this moment or to date to release any of these materials. However, it may be that at a subsequent date, we would wish to at least consider the possibility of publicly disseminating some or all of the written information presented in the initial phase of our impeachment inquiry hearings which commenced on May 9. I am directing the staff to prepare and bring to the attention of the full committee a compilation of evidentiary material that the committee may wish to consider for publication and public release. It would appear to me that when that compilation is completed, then and only then would the committee be in a position, if it so chose, to exercise its option under clause 27(o). So presently, I am at this time directing staff to prepare such a compilation of edited materials so that the committee may have an opportunity to vote under the option provided under clause 27(o). And I would like to ask counsel when it would be in a position to bring this matter to the attention of the committee?

Mr. DOAR. Well, I would think we can do that within 1 week or 10 days with respect to the materials that the committee might wish to present or to publish.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I have no objection to the suggestion that you are making, but I would like to receive your assurance and I would like to receive assurance from counsel as well that any and all material which we have received under our rule of confidentiality, the secrecy of which we must guard, or materials which contain so-called expletives deleted, which would be quite inappropriate for us to publish, or any other material which is irrelevant or which would be improper for us to include in a published report of our proceedings will be excised or eliminated before the committee votes on the release of the published material.

Now, I would hope that this would be done before we get anything in galley form, because I am very concerned that if it ever reaches a

galley form, the chances of keeping it from being in the public domain will be greatly diminished and I would like to have that assurance, Mr. Chairman.

Mr. RANGEL. Would the gentleman yield on that?

The CHAIRMAN. Insofar as the Chair is concerned, the Chair wants to assure the member that, first of all, I am bound by the rules of confidentiality and I am bound by the rules of this committee and the rules of the House and I will comply strictly with those rules. Beyond that, of course, I believe it is our obligation to make public at such time as the committee chooses to make public that material which I believe is in the public interest.

Mr. McCLORY. Mr. Chairman, do I understand, then, that there will be no printing of this material before we have a vote of the committee?

The CHAIRMAN. There will be no printing or publication except for the committee to be able to receive and have an opportunity to be able to vote on what is going to be presented.

Mr. McCLORY. I do not know exactly what that means. We have received this material in the form of mimeographed or multigraphed copies and of course, I have no objection to that being in that form. That is the form in which we received it. But to transform it into a printed galley proof form of any kind would seem to me to be extremely dangerous if we are going to adhere to the confidentiality.

I would like to say, Mr. Chairman, that I feel that we could be guilty of causing irreparable prejudice and irreparable damage to this committee and its reputation if we do not follow such a practice.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to commend you for realizing and making clear your endorsement of making available at the earliest possible time a full statement of the presentation, because the public is entitled to know. I think there is no question but what this committee and others in Congress, others within this Government, have printed ultra secret, top secret, all kinds of secret materials which have not been released to the press. I have confidence that this committee can prepare such a document without it being leaked, even to the members. God knows, our counsel is pretty good at that.

We want to commend you to that extent.

I feel sure that the committee can do that, and I just want to say that at the earliest, you can be sure that you will get a lot of support to release it. Let us just get it printed and let it go.

Mr. McCLORY. Mr. Chairman, is the gentleman disagreeing with my position as far as the elimination of any obscenities or any so-called expletives deleted or any other confidential or national security or grand jury or other materials?

Mr. BROOKS. I think that the material presented will probably be very carefully analyzed by the senior Republican and possibly yourself if Mr. Hutchinson is not available, by our chairman, Mr. Rodino, by our two counsels, and that anything that is of, that would violate international negotiations would be eliminated.

Mr. McCLORY. And you are not objecting to that being done preliminary to it being put in galley form?

Mr. BROOKS. I am sure they will do that whether we want them to or not. They already have before we even saw it.

Mr. SARBANES. Will the gentleman yield?

Mr. BROOKS. I yield to my friend from Maryland.

Mr. SARBANES. As I understand the rules of confidentiality, they never envisioned that the material received on that basis would ever remain under that cloak if it was deemed by a majority of the committee that it is necessary to make it public. Obviously, in preparing what you are going to make public, you would have to exercise some judgment. But it would seem to me the committee has some responsibility to make public everything that it can that is pertinent to this inquiry.

Mr. BROOKS. That is absolutely correct.

Mr. SARBANES. And let me just make a point on the expletives deleted. There are some instances, perhaps, in which the expletive deleted is essential to gaining a understanding of the meaning of a particular conversation that was taking place at that point. In those instances—I am not for making expletives deleted public that are not pertinent. But in those instances in which they are pertinent, I think there is a strong case to be made that they ought to be made public.

Mr. BROOKS. I quite agree with you, Mr. Sarbanes.

I yield the balance of my time.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Mr. Chairman, I hope that there is no objection that when we do prepare the information that we are going to release, Mr. McClory, and I was asking him to yield on this point, that we do not delete those materials that were edited out by the President. I am not talking about the filth and the profanity and things of that nature. I am only talking about where in the public transcript, there was no indication that certain things were omitted, and yet, due to our superior technical equipment, we found that certain parts were omitted. I hope that you are not objecting to that, because I do have a big problem. Mr. McClory, in understanding confidentiality when I am convinced that the release of those public transcripts by the President of the United States has adversely affected the rights of many of his staff to get a fair trial.

Now, I do not want to join in this. I am not convinced that the President was not aware when he released these public transcripts that on appeal, many of these convictions could not stand. But I hope you would agree with me that once these transcripts became a part of the public record, we cannot hide behind confidentiality when the public transcript itself is incomplete.

Mr. McCLORY. I would say this. Of course, I condemn the release to the public of all of these transcripts by the President. I think it was a mistake. We requested them, but we did not request that they all be put in the public domain. What I am thinking about is this committee, its dignity and position and its reputation, as well as the interests of those whose interests might be adversely affected, including the interest of the President that might be adversely affected.

Mr. RANGEL. I am not saying the public should not have received

those transcripts. I am just saying that now that we have found that, for one reason or another, the transcripts are not complete, do not you think we ought to complete the record?

Mr. McCLORY. I want an accurate and full report of our proceedings and I want it to be an appropriate and a dignified report which does not include either prejudicial material or sensitive material which would be inappropriate for this committee to publish. I am hopeful that the record can be corrected before it gets into printed form, which I think might be a little bit too late.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. May I clarify, first, I think, for the purposes of any further discussion, the rule concerning confidentiality and the rules for handling impeachment inquiry material. The committee will have final say as to the disposition of this material and under rule 4 the procedures for handling this impeachment inquiry material, before the committee is called upon to make any disposition with respect to the testimony for papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the inquiry staff. No member shall make any of that testimony or those papers or things public unless authorized by a majority vote of the committee, a quorum being present.

So that would, in my judgment, clearly state that the committee, after the staff has had an opportunity to compile this, has the final say as to whether or not it wants to dispose of this material publicly in whatever manner it sees fit to do. I would hope, however, that we have to recognize that there are materials which we have which are going to affect the rights of individuals and the cases of defendants who are scheduled to be tried and I think that the committee would be aware of this. Mr. Waldie.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I do not know if you are accepting motions now, but in the event you are, let me suggest a motion that I would intend to make.

The CHAIRMAN. I would like to advise the gentleman that we are not accepting any motions at this time, since it would appear to me that it would not be in order to do anything at this time other than to direct staff to compile this material. I think it would be appropriate at some later time, when staff has been able to advise us.

Mr. WALDIE. Well, let me suggest to you what I propose in the way of a motion and then I will accept the Chair's ruling.

When we first began these hearings and they were determined to be closed hearings because the material would tend to defame and degrade, a questionable proposition, but it would seem to me, at least, now we are ready to determine whether the material in fact tended to defame and degrade. If it did not, it would seem to me that reason, at least, for keeping material confidentiality no longer exists. But my motion would be much more narrow than that. My motion deals with another suggestion that I made earlier that we never had any opportunity to act upon, which was that the committee transcripts of the tapes already released by the President be released so that the

public has an awareness of the discrepancies between the President's transcripts—whether they are ascribed to the motives that our counsel ascribed those motives to be or whether they are not—the public ought to have the opportunity to compare our transcripts of the tapes with the President's transcripts. It violates no confidentiality, it violates no executive privilege, it does not tend to defame or degrade, and if you would entertain a motion in that regard, I would make that limited motion today.

The CHAIRMAN. No, I believe that that motion would be appropriate at the time that we would consider the question as to the disclosure of this material. I think only at that time would we be able to entertain it, since we would not be in a position to present that material until the staff is in a position to advise it.

Mr. WALDIE. We have seen the transcripts, Mr. Chairman. I have seen them. Everyone in this committee has seen them. They are grossly, in some respects, different from that which the President has submitted to the American people. I do not see where anybody's rights are prejudiced by this proposal.

The CHAIRMAN. However, I must advise the gentleman that the staff has not had an opportunity to take the transcripts, the edited transcripts, and the transcript that we have, and be able to present them for the committee's consideration in order to decide the motion of the gentleman. I would suggest that the gentleman defer that motion and I am sure it will not delay or prejudice his motion in any way whatsoever, and it would be in keeping, I think, with orderly procedure.

Mr. RAILSBACK. Would the gentleman yield?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I was going to suggest that it might be possible that if the rules of the House interfere with the performance of a constitutional mandate, I suppose the Constitution would be superior.

Mr. WALDIE. No question.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I wonder, Mr. Chairman, if we could have some understanding though, as to the guidelines which the staff was going to follow in preparing the material that they are going to recommend for release. Mr. McClory's point, it seems to me, raises a very basic question.

If the material would tend to degrade the person making the utterance, then I would not suppose that that, by itself, would come within the rule of the House that says that we should not release materials that tend to defame or degrade, because that is talking about degrading third persons. It seems to me that merely because we have an expletive is not in itself grounds for deleting that portion of the transcript. I am only using that as an example. It seems to me that the rule should be, the guidelines should be that we only delete material as to which we have an express reason for deleting it under the rules of the House or the rules of protecting the rights of parties to litigation, and that otherwise, the rule should be that everything that we have considered in this committee will be released to the public.

Mr. McCLORY. If the gentleman will yield?

Mr. SEIBERLING. Yes.

Mr. McCLORY. I would like to point out that there are many irrelevant materials which do impinge upon the the interests of other persons not involved in this proceeding at all. That certainly should be eliminated, because we do not want to do harm to innocent persons. That is the reason for the rule.

Mr. RAILSBACK. Would the gentleman yield?

Mr. McCLORY. It seems to me that we should be very, very careful in our deliberations that we do this in an honorable way. That is what I am think about. If we do not, we are going to bring criticism on this committee, as well as adversely affect the rights of innocent individuals, or persons whose rights we should not affect adversely.

Mr. SEIBERLING. I could not agree with you more, but I think merely because someone says something which puts him in a bad light is not a reason for this committee to delete that material.

Mr. McCLORY. Well, of course not.

Mr. RAILSBACK. Will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Illinois.

Mr. RAILSBACK. I want to thank you for yielding, but in respect to the expletives, I really think we would be better off leaving the expletives in there for a number of reasons. For one thing, the American public thinks they are worse than they are. My feeling is, as was pointed out by somebody else, there are some expletives that do add a certain emphasis. I just think we do not need to act like school children here.

I think the President hurt himself by all his deletions, expletives deleted, because they are really not as bad. My feeling is, too, that it is important that we give the American public the same kind of a view that we have had.

In other words, Mr. Chairman, I would even be, at the proper point, for letting the American public hear the tape.

Mr. SEIBERLING. Oh, yes.

Mr. RANGEL. Yes.

Mr. HUNGATE. Hear, hear.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Just briefly, it seems to me that when we come to this matter, there are only a couple of things to consider. You weigh the need or desire of the American public to know on the one hand against the question of what makes for a fair hearing or trial, both for the President and for third parties who have trials pending, on the other hand. I have not resolved that question personally myself at this time, but I think that is the question.

I think all this talk about expletives, filth alleged, and so on, on both sides of the aisle is quite beside the point. I think it is most unfortunate. I have heard all these things myself the same as the rest of you have and we are sitting here sort of smearing the scenery and giving a far worse impression than anything on the tapes. I have not heard any filth. I have heard some expletives. They are expletives I have heard before. I expect everybody here has heard before. We are talking about things, just making them sound worse, as Mr. Railsback says, than they are.

There are only two questions, as I say. One is the need of the public to know balanced against the question of a fair hearing, both for the President and for other people. The rest of it is irrelevant.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman. I would subscribe to what the gentleman from Illinois said. I think we will have to come to a time when the public hears these tapes. We have made it clear in this committee that the voice and the voice inflection is very important and I think there will come a time.

I would say in response to Mr. McClory's remark about accuracy, every day, there are stories that are written, there are TV and radio accounts that are made of our proceedings, and it would seem to us that we could have a more accurate picture if this material was released. I think that would be in the public interest, I think it would be in the President's view—would be in his interest as well.

Then another point that I would like to make is that since so much of what we are investigating is centering around events that took place in secrecy, to me, what the committee should be doing in contrast is opening up the process, is making this information available and not play back the kind of executive privilege argument that the President is giving us. Because we will find ourselves in the same box. I think that since so much of it was in secrecy, since the press accounts are out there and we have had a few unfortunate leaks, it is in the public interest to have the story out and, in fact, open the doors and even let the public hear the tapes. So they themselves, once we make our decision, whichever way we go, can truly accept it as the right decision.

The CHAIRMAN. I am going to recognize Mr. Kastenmeier, then we are going to go on to a discussion of the Dennis proposal. Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, very briefly, I would like to speak to the suggestion of the gentleman from Ohio, Mr. Seiberling. I think it is very important that guidelines are expressed and that the staff does this, that it presents guidelines that these be not only for our own benefit but for the benefit of the American people, the public in a sense; that there be an affirmative burden, really, on the staff to indicate why certain materials are in fact suppressed or maintained in secret.

I would think, too, that I gather these will not be released 100 percent, that there will be a portion kept in confidential status for sometime. But I would also hope that we would re-screen these materials for supplemental release at an early moment. Some of these materials need not be suppressed indefinitely.

Mr. McCLORY. Will the gentleman yield to me for just one comment?

Mr. KASTENMEIER. Yes, I yield to the gentleman.

Mr. McCLORY. I would just like to say this, that a great deal of the material which we received which the gentleman from Iowa would like to publish would not have been received by this committee if it were not because of our rule of confidentiality under which we gave assurances that it would not be placed in the public domain, and I think it would be a violation of the trust of this committee to violate our rule of confidentiality and expose the grand jury transcripts and

CIA materials and other things that we received from the House Armed Services Committee, and other confidential materials which we received from the grand jury and from the court on the basis of a rule of confidentiality which we solemnly supported here.

Mr. KASTENMEIER. I see no conflict with that if the staff indicates—

Mr. McCLORY. I support the gentleman. I concur with the gentleman from Wisconsin.

Mr. SARBANES. Will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Maryland.

Mr. SARBANES. It was never my understanding that the material received on that basis would always remain that way.

Clearly if it were pertinent to the judgment of the committee that at some point, it would be necessary to make it public to the other members of the House and to the American people. It was my understanding that that was understood by the sources that furnished this material. It was initially received on that basis. It was going to be handled according to the rules, but there was always the possibility that at some point, a majority of the committee would then deem that it was necessary to release the material publicly. And that goes with respect to all of the matters that the gentleman was referring to.

Mr. McCLORY. I do not disagree with the statement made by the gentleman from Maryland. I think it is up to the committee to decide. But at the same time, we are not free to expose everything. We have to adopt the guidelines, as the gentleman from Wisconsin has indicated and use fair judgment.

The CHAIRMAN. Might I advise the committee that this discussion is only in the abstract and it was for that reason that the Chair advised the members of the committee that instructions have been issued to the staff to prepare a compilation of this material in accordance with the rules of the House so that the members may, under those proper safeguards, then be able to consider whether or not they want to release this material to the public. When this is ready for presentation, I think the committee will have ample time to consider and discuss and then to make its decision.

We will now move on to the discussion of the Dennis proposal regarding witnesses and I recognize the gentleman from Indiana, Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I thank you for the recognition. I have a motion at the desk.

Mr. MEZVINSKY. Mr. Chairman, point of order.

The CHAIRMAN. Will the gentleman defer until the motion is read?

Mr. MEZVINSKY. All right.

The CLERK [reading]:

The motion offered by Mr. Dennis of Indiana:

Resolved that

1. The following individuals—because of their apparent information regarding the alleged Watergate “cover-up”, including particularly the alleged payment of \$75,000.00 to William O. Bittman, Attorney for Howard Hunt, allegedly on the evening of March 21, 1973—shall be subpoenaed and shall be called before the committee as witnesses, and shall be examined and cross-examined by the committee and its counsel, and by counsel for the President of the United States:

John Dean; H. R. Haldeman; John Ehrlichman; John Mitchell; Paul O'Brien;

Fred LaRue; Manyon M. Millican; Sherman E. Unger; William O. Bittman; Robert C. Mardian; Charles W. Colson; E. Howard Hunt.

One name has been added, Laura Fredericks.

2. Immediate consideration shall be given to the problems of granting use immunity to any one or more of said witnesses who may claim his Constitutional privilege against self-incrimination, and this matter shall be promptly resolved by subsequent action of the committee.

The CHAIRMAN. The gentleman from Iowa is recognized.

Mr. MEZVINSKY. Mr. Chairman, I would raise a point of order. Under our agenda, it says "discussion of the Dennis proposal." I would raise a point of order that the motion is not proper at this time, since under the procedures that we have in front of us, no determination as to the issue of calling witnesses should be made until after the presentation itself. So for that reason, I would say that it is proper to have a discussion on the motion, but as such, there should be no vote taken, I would say that it is not proper to make the motion and have a vote at this time.

Mr. DENNIS. Mr. Chairman, a parliamentary inquiry.

If we are to have discussion, and I do want to be heard on the point of order at an appropriate time, but the chairman indicated to me that while this point or order would be raised, we would have discussion on the merits first. Therefore, I wonder if it would not be the appropriate thing if the gentleman from Iowa wishes to do anything at this time to reserve a point of order rather than to raise it.

The CHAIRMAN. Does the gentleman wish to reserve his point of order?

Mr. MEZVINSKY. Since the gentleman from Indiana is aware of the objection as to the point of order, I will certainly reserve the point of order.

Mr. CONYERS. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. CONYERS. I had a like point of order that went even further than the gentleman from Iowa's, but what is the logic involved? If this is defective from the point of view of a point of order that could be lodged against it, what good purpose would be served by continuing a discussion on the merits?

The CHAIRMAN. In answer to the gentleman's inquiry, I would state that the agenda does call for a discussion of the Dennis proposal. It would not, however, encompass the entertaining of a motion. Therefore, if the gentleman insists on his point of order, I would have to rule in favor of that point of order, but if he reserves that point of order, then the gentleman from Indiana is free to take up discussion of the matter as the agenda calls for.

Mr. McCLORY. Mr. Chairman, on the point of order, could I just make this statement?

I did have a discussion with the chairman preliminary to this meeting and I did state that I would hope and expect that the Republican members, the minority members who wish to raise questions with regard to our further proceedings might have that opportunity. I think that this is in accordance with the chairman's spirit of fairness, that he has put this on the agenda for the purpose of the discussion.

The CHAIRMAN. The Chair would—

Mr. McCLORY. I do not understand that we are going to arrive at

a decision today, but I think it would be inconsistent with fair play if we do not have the opportunity to discuss.

The CHAIRMAN. Well, I might advise the gentleman that the only reason that the point of order has been raised at this time is because the gentleman from Indiana, notwithstanding the fact that the agenda called for a discussion, was ready to propose a motion. And unless the gentleman from Indiana either withdraws his proposal of a motion, then it is up to the gentleman from Iowa as to whether or not he wants to defer his point of order.

Mr. MEZVINSKY. Mr. Chairman, I would simply say that it was my understanding when I saw this on the agenda that there would be a discussion. It was not my understanding that the motion would be made. I would reserve raising the point of order in deference to the chairman and in deference to the Republicans that want to discuss the matter, because it is on the agenda. But, if a motion is going to be made, I shall hold to the position that I will raise a point of order.

Mr. SARBANES. Would the gentleman yield?

Mr. MEZVINSKY. But if it is simply a discussion, which is on the agenda, I will certainly reserve the right, and I will be glad to yield to the gentleman from Maryland.

Mr. SARBANES. I thank the gentleman from Iowa for yielding.

I simply want to make one observation to the gentleman from Indiana, and that is that the motion he has placed before the committee violates the rules of confidentiality of this committee.

Mr. DENNIS. Mr. Chairman, I would like to reply to that if the gentleman will yield before I say anything else.

The CHAIRMAN. Is the gentleman going to speak on the point of order or is the gentleman going to withdraw his motion? I would like to be advised so that I know how to proceed.

Mr. DENNIS. Before I do either, I would like to ask the gentleman from Maryland to yield, since he has made a comment of a personal nature about this motion, and has said that I violated our rules by filing it. And I would like to respond to that initially before I go to other matters, which I will proceed to promptly. So, if the gentleman will yield, if he has the floor?

Mr. SARBANES. I do not have the time.

Mr. DENNIS. I would like to make a response.

The CHAIRMAN. The gentleman does not have the time.

Mr. DENNIS. Well then, I would like to speak to a point of personal privilege, since that suggestion has been made.

The CHAIRMAN. The gentleman will be recognized.

Mr. DENNIS. All right. I will simply point out that if anyone—I will point out a couple of things. If anyone wants to close this session, they have got a right to close it, and I will vote for it. But, at sometime we have got to transact business.

Second, everything that is in this motion was in the Washington Post a couple of months ago, and anything that was not in the Washington Post a couple of months was in the New York Times last Sunday. And I did not put either one of them there. I do not know who, did, but I know I did not. So, I have not violated anything. I am just trying to do a little business on this committee. And the first business session we have had in yea these many years, and I think I have a right to resent the gentleman's suggestion, and I do.

The CHAIRMAN. The Chair now wants to put the question to the gentleman from Indiana——

Mr. DENNIS. May I make a parliamentary inquiry?

The CHAIRMAN. The gentleman will state it.

Mr. DENNIS. It is not unknown in the procedure of the House, from my experience, when a motion is made to resolve a point of order and to allow a discussion on the merits, and to then permit the point of order, which has been reserved, and then allow discussion on the point of order and rule on it. And I would like to see that procedure followed here. But, I have no intention of withdrawing my motion, because I do not think you need to under this procedure.

Mr. CONYERS. Mr. Chairman, point of order.

Mr. DENNIS. Mr. Chairman, if the gentleman from Iowa insists on the point of order at this time, I would like to be heard on the point of order.

The CHAIRMAN. Does the gentleman from Iowa insist on his point of order?

Mr. MEZVINSKY. I will insist on the point of order at this time.

The CHAIRMAN. Do you defer your point of order, reserve your point of order?

Mr. MEZVINSKY. I shall insist on the point of order concerning moving on the motion given by the gentleman from Indiana. If the gentleman from Indiana wants to simply discuss the issue, as it is on the agenda, then I think he should make that point, and then the point of order would not lie.

The CHAIRMAN. The Chair will then rule that only the gentleman from Indiana will be recognized for the purpose of discussion of that matter.

Mr. DENNIS. What are we discussing, the point of order?

The CHAIRMAN. The point of order, you would have the right to reply to the point of order.

Mr. DENNIS. All right now, before I reply to the point of order, Mr. Chairman, if that is the subject before us, I would like to know what the point of order is.

Mr. MEZVINSKY. Mr. Chairman, for the third and fourth time, and the last time, the point of order is very simple, that a motion at this time is out of order, and that because it is out of order, regarding procedures, and that anything as to witnesses follows the presentation. On that basis, I say that it is improper to move and make a motion, which the gentleman from Indiana has done, and raise a point of order on that basis.

I have repeated it three times. I think it is sufficiently clear.

Mr. HUNGATE. Would the gentleman from Iowa yield?

Mr. MEZVINSKY. I yield.

Mr. HUNGATE. Would it be possible for the gentleman to perhaps withdraw the point of order, and the gentleman from Indiana to withdraw his motion, and the committee to agree on a closed session at 12:30? Would that be a fair arrangement?

The CHAIRMAN. The Chair will state that the Chair has the right to rule at any time, the point of order having been raised. The Chair wants to permit the member from Indiana, who requested the opportunity to discuss this, to be given that opportunity. But, I am not go-

ing to go ahead and continue to reply to parliamentary inquiries when the Chair has already stated that he would be ready to rule unless the gentleman wants to be heard on his point of order.

Mr. DENNIS. I do want to be heard, Mr. Chairman.

The CHAIRMAN. Well, the gentleman then will be heard.

Mr. DENNIS. Thank you, Mr. Chairman.

The Chair will recall that I raised this question many months ago orally in the committee. Also I raised it again by a motion at the time that the procedures were being adopted. It was ruled out of order at that time on the ground that it was not procedural. It was placed on the agenda today, and I had thought that we would finally have a discussion on the merits and a vote on the merits.

I would like to point out that this is a very important fundamental proposition. I am interested, as a member of this committee, in arriving at the truth. I do not think we can do it without calling the key witnesses to the key points before us. I think we have a positive duty to do that, and I think it is a matter that this committee has got to face at some time, and it has got to face it very soon, because if any of these people that we may want to call claim their fifth amendment rights, and we have to consider the matter of immunity, it is going to take 30 days, if the Special Prosecutor so elects, before we can get a court order granting them immunity. And if we do not start the procedure until after we are through this presentation, we are going to be confronted with a scenario where we have not done that first thing about a witness until the middle of July, and then the pressure for a vote is going to be overwhelming. And we are going to vote without having a single witness before us, except maybe one or two that somebody on the staff may want to call.

Now, that is an outrageous program. Now, I am shocked, really shocked that there is an attempt to bury this kind of a thing on a procedural point. I cannot understand why anybody who is interested in an investigation would want to do it, and look what a flimsy point it is. Rule B, 1, is what he is talking about, I think, although he never mentioned the rule.

"Following that presentation," and that is the presentation of evidence, following that, "the committee shall determine whether it desires additional evidence." And therefore, the argument is that since we have not finished the presentation we cannot now determine whether we desire additional evidence.

Now, that was not what that rule meant when we adopted it, and it is not what it means now, if properly interpreted. My discussion was well known when this rule was adopted. My motion was put in when this rule was adopted. Nobody suggested when these rules were adopted that the idea was to prevent us determining on the matter of some witness or witnesses we might want at any point. Sure, we can call additional evidence if we want to after the presentation. But, there is nothing here, not the first word that says we cannot decide to call, make a determination as to calling witnesses or a witness at any point in our procedure. And it is impossible to think that the committee wanted to hamstring itself that way.

These procedures were not designed to delay the investigation. They are subject to modification any time we want to, but we do not need

to modify them for this. We have got an inherent right to decide whether we want witnesses or not, and at any point. We can call them when we get through with the other presentation.

But, all I am saying is, now we ought to make the determination whether we want to call them, and proceed to the determination of whether we want to grant immunity, if that question is raised. And I am saying we cannot do it ever, as a practical matter, if we do not do it pretty soon. And I am submitting to you that this rule, which says that following presentation we can determine whether we want additional evidence, was never meant and does not, if properly interpreted, preclude us from determining right now that we might want certain evidence, and want to hear it later on. It just is not what the rule said.

Mr. McCLODY. Would the gentleman yield?

Mr. DENNIS. I yield to the gentleman.

Mr. McCLODY. I thank the gentleman for yielding.

I think the gentleman raises a very good point, and I would like to just ask this. I think it is important for us to consider now, and at least initiate our consideration as to what the witnesses and how many witnesses we wish to call if any, and to determine that point. And I do not gather that the gentleman is going to ask for action on his motion necessarily today, but he is presenting his motion for the purpose of discussion. And if the motion is not acted upon today, the gentleman would not object to that.

Mr. DENNIS. Well, I appreciate the moral support of my friend from Illinois. But, I will say to the gentleman very frankly that if my motion is not acted on today it will be because it is held out of order, and that is the only reason it will not be acted on today, because I think it ought to be acted on, and I do not think that if it is not acted on today that, frankly, anything like it will ever be acted on.

The CHAIRMAN. The time of the gentleman has expired and the Chair is prepared to rule on the point of order.

First, might I point out that the gentleman did discuss with me and did request that the Chair consider this question and list it for consideration and discussion on the agenda. The Chair recognizes the importance of this matter, and at an appropriate time this matter will be considered.

However, the Chair, after considering the rules and inquiring as to whether or not this matter could be properly presented to the committee for consideration, concluded, after a study of the rules, that it would not be appropriate to list it for consideration at this time. And the Chair so advised the gentleman and listed it for discussion. The discussion would not permit the offering of a motion, and so the gentleman's point of order, the point of order raised by the gentleman from Iowa, in my judgment, is, as the members have noted, the agenda lists as item 5, discussion of the Dennis proposal regarding the calling of witnesses.

This was done to comply with rules A and B of the committee's impeachment inquiry procedures adopted on May 2. Those rules, in my judgment, make clear that only after the completion of the initial evidentiary presentation shall the committee consider the calling of witnesses. The initial presentation is not yet completed, and under

rule A it is explicit, and in the Chair's opinion, that the initial presentation is of evidence other than the testimony of witnesses.

When that initial phase ends, then and only then, under rule B shall the committee consider and vote any desire to receive additional evidence, including the calling of witnesses.

In the light of this rule, the Chair sustains the point of order——

Mr. DENNIS. Would the gentleman yield?

The CHAIRMAN [continuing]. Of the gentleman from Iowa.

Mr. DENNIS. For an inquiry? Would the gentleman yield for an inquiry? Does the chairman's ruling then mean that we cannot and will not do anything regarding the possible calling of witnesses until after the next 2 weeks, or whatever it takes to complete this documentary presentation, and then and only then will we start on the matter of witnesses?

The CHAIRMAN. The Chair has stated that this does not preclude, this ruling does not preclude a discussion of the matter without entertaining a motion of this sort for the calling of witnesses, as is contained in the rules of procedure. And it was for that reason that the Chair listed this agenda item today, not to preclude a discussion, and a proper debate on the subject, so that at a time when the initial phase of the presentation has been completed, the members would be in a better position to determine what witnesses would be called. And I think that the members certainly would want to confer as well and consult with counsel, who I am sure have some views, since they have dealt with this matter from the very beginning. And I am sure of some views already which they would recommend for the committee's consideration.

Mr. McCLORY. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. McCLORY. Could I make just a comment?

Mr. DENNIS. Mr. Chairman, would the chairman consider scheduling a business meeting next week, for example, where this matter might be taken up and discussed so that we could begin to come to some resolution of the problem because of the obvious problem that I have pointed out, and that no one has answered, of the time involved?

The CHAIRMAN. Well, the Chair would like to reply to the gentleman that the Chair sought to accommodate the needs of the committee to discuss this, and sought to comply with the request of the gentleman and listed the matter on the agenda as discussion. But, the gentleman sought to go beyond.

Mr. DENNIS. What we want is action rather than just discussion, but I would have gone along with that——

Mr. BROOKS. Regular order.

Mr. DRINAN. Regular order.

Mr. McCLORY. Mr. Chairman? Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I thank the Chair. I wonder if the staff has considered the nature of this immunity problem? I think the gentleman raises some significant questions, and I wonder do all States grant immunity? I understand we have use immunity and overall immunity. Do all States do that, or do some just lay back on the fifth amendment?

Mr. DOAR. I can't tell you, Congressman, if all States do that or not.

Mr. HUNGATE. Mr. Jenner?

Mr. JENNER. I do not know about all States, but in response to your question, the staff is examining this subject matter in quite some depth, and I had discussion with the constitutional and legal staff last night and again this morning. And we will be prepared to discuss that very thorny question, not only as to the 30 days Mr. Dennis raises, but also a question of whether this committee and the House of Representatives, under the Constitution, may grant immunity without going through statutory procedure.

Mr. HUNGATE. I thank the gentlemen.

Mr. LOTT. Would the gentlemen yield?

Mr. HUNGATE. I yield to the gentleman from Mississippi.

Mr. LOTT. Let me pursue that a second, if I could. You say you have not reached any conclusion as to what might be the situation as to when we would be able to get these witnesses?

Mr. JENNER. No, no.

Mr. LOTT. Are you doing a study?

Mr. JENNER. This is another question. I'm sorry, Congressman Lott. What I was saying is that the staff is conducting an in-depth examination of the subject matter of the problems that the committee will have with respect to the granting of immunity.

Mr. HUNGATE. If I may, and then I will yield to the gentleman, it seems to me, to me at least, the question is not a simple one as to whether or not we should grant immunity, assuming that we can. And as counsel suggested, it may present statutory hurdles. And I think to that extent, this issue is one that we may need to determine at an earlier date than the others.

If we are not going to grant immunity, then we do not have the other statutory or delay problems perhaps. And as I say, to me it is not a simple matter that we should do it. I think we want to consider it carefully.

Mr. McCLORY. Mr. Chairman?

Mr. HUNGATE. And I think that the gentleman from Indiana has raised a good point there, but if we do not do it, then we do not get into those procedural problems.

And the statement though that we would, we might decide this matter without witnesses, I think it is understood generally in the committee that Mr. St. Clair will have an opportunity to suggest the names of witnesses, and I would not think that there is anyone, I do not think he will get the New York phonebook, but I do not think there is anyone that would not consider giving him the opportunity to call a reasonable number of witnesses. If there is any objection to that, I would want to hear it.

Mr. LOTT. If the gentleman would yield?

Mr. HUNGATE. I would yield to the gentleman from Mississippi.

Mr. LOTT. Is it possible, depending on what we decided to do, that it may take as long as 30 days to get these witnesses? Is that correct or not?

Mr. JENNER. Congressman Lott, that is correct. And what I wish to emphasize is that we are considering the possibility that under the Constitution we can avoid that.

Mr. LOTT. I thank the gentleman for yielding.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I think it is very important that the committee consider at the very earliest time the entire subject of witnesses who will be called as live witnesses before this committee. We know that there are many discrepancies which can be obviated through the calling of witnesses to clarify and to bring out the truth insofar as the facts before this committee are concerned. And I would hope that the staff would suggest the possible names of witnesses. I know that there has been some thought given to that, and that we would also include Mr. Dennis' motion as a suggestion of possible witnesses. And as the gentleman from Missouri, Mr. Hungate, has said, that we invite perhaps Mr. St. Clair to submit the names of witnesses that he thinks might be essential for the committee to hear in the course of our hearing before arriving at a final conclusion of this matter. And I hope that that will be taken up by you, Mr. Chairman, with our counsel, and that we can have some early discussion of this.

The CHAIRMAN. Might I hear from counsel regarding this matter?

Mr. DOAR. Well, it is my view, Mr. Chairman, that the time for the committee to decide what witnesses should be called should be made at the conclusion of the evidentiary presentation for the reason that, first of all, the staff may recommend certain witnesses to be called, the committee members may have certain witnesses to be called, and Mr. St. Clair may have certain witnesses to be called. The only way to consider that in an orderly way would be for the committee to have all of those matters before it at the same time.

The second thing is—the second thing is that if there was a particular witness where we believed that the committee would want to hear him, and we thought that he was essential, that the only way that the witness could be persuaded to testify would be through a grant of immunity, there is nothing to prevent us to come forward, and we would come forward with that material, or with that matter as quickly as we could.

But, at this time, I cannot represent to the committee that there are witnesses that we would expect to call that would only testify under immunity.

Mr. MEZVINSKY. Mr. Chairman?

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Well, Mr. Chairman, I want to talk on another subject, so if Mr. Mezvinsky wants—

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I just want to make clear that it was not the purpose to not have discussion, not have the thought process started which Mr. Dennis has pointed out. I think what Mr. Doar is making clear is that to a great extent, any witness, if we call any witness, his comments may very well relate not just to the Watergate area, but may relate also to other areas that will be covered during the presentation. So, I think in fairness to the committee, the committee would want to have the complete presentation so that, in fact, that witness, if a witness is called, can relate to all of the areas, and that subsequent points can be raised, not just on Watergate but across the board.

And I would also say that in fairness I do not believe in the gag rule. It was not intended for that, and I would have expected what Mr. McClory pointed out if, in fact, there could have been the discussion without the motion and that in fact would have been proper and we could have moved on through the presentation.

And I would add as the last point, I could not agree more that time is of the essence. I think time is of the essence. I think we should be thinking about it, and we should be facing the very real prospect that we can make our decision within the next month to month and one-half.

Mr. LOTT. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

Mr. LOTT. One further question on that subject if I could, and it is a brief one.

The CHAIRMAN. Mr. Lott.

Mr. LOTT. I agree that time is of the essence, and following again the line of questioning from Mr. Hungate, when might we have some report on this subject, Mr. Jenner, or Mr. Doar? You say you are working on it. Do you have any idea when we might get to a point where we could make some decision on this?

Mr. JENNER. I think we—excuse me.

Mr. LOTT. Sure.

Mr. JENNER. Congressman Lott, we should be able to report to you the latter part of next week.

Mr. LOTT. Thank you, Mr. Chairman.

Mr. FROELICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROELICH. Mr. Chairman, on another subject, if I might ask the chairman, would it be proper at this time to move that the committee staff prepare a subpoena to present to the next business meeting of this committee directed at Judge Sirica to turn over four Presidential tapes that he has in his possession and custody?

The CHAIRMAN. I would have to state to the gentleman that that motion would be out of order at this time. It is not listed on the agenda. I recognize the gentleman for the purpose of speaking out of order, but not for the purpose of offering any motion.

Mr. FROELICH. Mr. Chairman, may I speak out of order?

The CHAIRMAN. The gentleman is recognized to speak out of order.

Mr. FROELICH. We have not received from the staff, and I would ask that the staff provide us with a memo that Mr. Jenner prepared, and the memorandum that Judge Sirica has handed down regarding these four Presidential tapes. Now, all during the discussion yesterday, and reflected in many of the votes yesterday, were the allegations that the power of impeachment is broad, deep, and absolute in this committee. I do not necessarily believe that myself, but that is clearly the representation of the staff and the majority members of this committee. If that be so, we should use that power to obtain the best evidence available, and the best evidence available are the tapes. And those tapes are in the possession of Judge Sirica. And it seems to me that this committee or its staff should, if not at this time, the next business meeting, discuss in depth the subpoenaing of these tapes from this judge that has refused to release them to this committee.

Mr. DENNIS. Would the gentleman yield?

Mr. FROEHLICH. I yield.

Mr. DENNIS. I take it what the gentleman is saying, in effect, is that since the committee has taken on the executive branch we ought to take on the judicial branch too. Is that correct?

Mr. FROEHLICH. What I am saying is that this committee said that we have the sole power of impeachment, that it is broad, it is deep, it is absolute, and we have a job to do for the American people in this whole area of this impeachment inquiry. And no President should stand in our way. I am saying likewise, no judge should stand in our way.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, on the basic point we were discussing before on the proposal made by Mr. Dennis, before we close, I think it should be at least observed that I think it is going to be necessary for us to consider very conservatively how many witnesses we call, indeed. If we have a proposal, preemptive or not, by committee members for lists of 13 or 14 witnesses, and those by staff, and those perhaps by Mr. St. Clair, and if one considers the staff will need to question these witnesses and Mr. St. Clair will need to question perhaps, but not cross-examine and cross-examine his witnesses, and that 38 members of this committee will also have that opportunity, if we have anything like a list of witnesses, such as suggested by Mr. Dennis, we will make the Ervin committee green with envy in terms of our proceeding as a long-term, unending, public spectacle. So, I think it is clear that we will have to consider a very small number of witnesses rather than a large number of witnesses.

Mr. SEIBERLING. Would the gentleman yield on that?

Mr. KASTENMEIER. Yes, I yield to the gentleman from Ohio.

Mr. SEIBERLING. I wanted to say something on that too, because I think we need to have some kind of an understanding, which apparently we do not have at the present time, as to the nature of this investigation. And I think Mr. Dennis' statement that we want to call every witness who might have anything to say about this, the subjects we are investigating, is the kind of thing that we would do if we were a trial body, like the Senate would be, in an impeachment trial. And I do not consider or conceive, and I do not think most of us conceive that that is our function. As soon as we have received sufficient evidence to believe that there is probable cause of impeachment or impeachable offenses, on ITT or in the various areas that we are investigating, then it seems to me that that is sufficient, and that the only witnesses that we need to call are to clear up possible gaps in our evidence.

The trial of this whole matter, if it comes to that, is not the function of this committee or the House, and, therefore, I do not think that the gentleman's point is sound. And at some point we ought to have some kind of an understanding in the committee as to just what theory or philosophy we are proceeding on in this whole investigation.

Mr. DENNIS. Will the gentleman yield?

Mr. McCLORY. Would the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding. I would like to concur in what the gentleman from Wisconsin said, and not disagree with what the gentleman from Ohio said.

I think we have to limit the number of witnesses that we are going to call, and I think also that it should be in that narrow area where we have conflict at the present time which might be resolved by the testimony of one or two or a small number of witnesses, but not try to carry on a full review of everything that has been covered in the Senate Watergate and the grand jury proceedings and all of the rest. And so, that would really be my intention, although I do not want to concur in the fact that all we need is probable cause, because I think maybe along down the road we are going to decide that we need something more than probable cause, and that would be a further reason for wanting to have corroboratory testimony.

Mr. HUNGATE. Would the gentleman from Wisconsin yield?

Mr. KASTENMEIER. I yield.

Mr. HUNGATE. I want to be sure that I do not misunderstand the gentleman from Ohio. It is not your thought that should probable cause, or whatever we are going to need be established, that that is all? We would still, of course, give Mr. St. Clair an opportunity to call witnesses, would we not?

Mr. SEIBERLING. Of course. Yes.

Mr. CONYERS. Mr. Chairman, is it appropriate to move an adjournment of this meeting? I so move.

The CHAIRMAN. It is always appropriate to move adjournment.

If the gentleman will defer, I have stated that I would recognize the gentleman from California who sought to speak out of order as well.

Mr. WALDIE. Well, Mr. Chairman, I was going to make a comment about the necessity, I think, of opening the hearings, but after listening to the conversation of the last hour, it probably would be grossly inappropriate to talk about that.

Mr. FROEHLICH. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. There is a motion to adjourn.

Mr. FROEHLICH. Could the staff send us the Jenner letter to Sirica and the Sirica memorandum to your office?

The CHAIRMAN. The staff will send the letter to each of the members, and there is the motion to adjourn, and the committee is adjourned.

[Whereupon, at 12:07 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Executive Session

TUESDAY, JUNE 4, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE OF THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordon, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel; Constantine J. Gekas, counsel; Richard H. Porter, counsel; Jared Stamell, counsel; and Sally Regal, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

And before I call upon Mr. Doar to proceed, Mr. McClory has a short announcement.

Mr. McCLORY. Mr. Chairman, I thought members would be pleased to know that I spoke on the phone with our colleague, Congressman Hutchinson, just before coming to the committee room. He called me. His voice was very strong and very firm. He says he feels very well, and he is delighted to be home, and he hopes to be back at his desk and back to the committee meetings later this week.

Mr. BROOKS. Mr. McClory, do you attribute his well-being to your statements of yesterday?

Mr. McCLORY. I will tell you that he has, he has a thing about the media, you know. I do not think he even had his TV set on.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman and members of the committee, we are here this morning to present matters with respect to ITT and also the Senate Confirmation Hearings of Attorney General Designee Richard Kleindienst. Mr. Jenner and Mr. Gekas of our staff will assume the labor of this presentation, and Mr. Jenner will introduce the mem-

bers of the team that worked on this particular part of the inquiry.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman, ladies and gentlemen. We have five fine young people I would very much like to introduce to you.

First is Robert Sack, who is sitting next to Mr. Doar, who is a graduate of Columbia University School of Law. And for the last 10 years he has practiced law as a partner in the New York City law firm of Patterson, Belknap, and Webb, from which he resigned to join the impeachment staff. He is associate special counsel, in charge of the task force on agency practices and personal finances, and participated in the preparation of and investigation of the ITT material we will present to you today.

Next, seated to my right, who will serve as the interlocutor today, is Constantine, Chris Gekas. He is a graduate of the University of Illinois School of Law, which Congressman Railsback is a graduate of and so am I. He is a member of the Agency——

Mr. RAILSBACK. Northwestern.

Mr. JENNER. Were you Northwestern? I thought to compliment you. He is a member of the agency practices task force which had primary responsibility for the ITT investigation. He also serves as a member of the permanent staff of the Judiciary Committee as minority counsel to the Subcommittee on Crime, chaired by Congressman Conyers. He came to the Judiciary Committee from the Criminal Division of the Department of Justice, and prior thereto practiced antitrust law with one of Chicago's largest and best known law firms.

Jared Stamell and Richard, Rick Porter are next. Each of them is a member of the agency practices task force. They have participated in the ITT phase of the inquiry.

Now, Mr. Stamell served as attorney in the Antitrust Division of the Department of Justice. He is also a member of the permanent Judiciary Committee staff as a minority counsel to the Subcommittee on Monopolies and Commercial Law, chaired by our distinguished chairman, Mr. Rodino. He is a graduate of Harvard University Law School. And I have a little parenthetical note here that he studied trial practice under the tutelage of Mr. St. Clair.

Mr. Porter, seated directly to my rear, is a graduate of Yale University Law School. He practiced law in Milwaukee, Wis., with a firm, well known and large, of Foley & Lardner before joining the impeachment inquiry staff this year. He graduated from Yale in 1972.

Our last of the staff here today is Sally Regal. She attended Northwestern University. Congressman Railsback, and presently is on a leave of absence from Georgetown University here in Washington. She has been a research assistant with the impeachment inquiry staff since November 1973, and as a part of her responsibility, she assisted the gentlemen I have introduced in the investigation of the ITT matter.

The CHAIRMAN. Mr. Jenner. I would just like to call your attention to the fact, and I say this only parenthetically too. I do not know whether it has anything to do with the fact that he studied under Mr. St. Clair, but Mr. Stamell is not a member of the minority staff of the Antimonopoly and Commercial Law, but a member of the majority staff.

Mr. JENNER. I see. All right.

There are a few preliminary matters with respect to this presentation to which I wish to call your attention. You received an envelope, and one of the documents in the envelope is a glossary or a list of names of persons who will be mentioned during the course of the presentation. We thought it would be helpful for you if you wish to flip back occasionally to refresh your recollection as to who the persons were who will be mentioned during the course of our presentation.

The CHAIRMAN. Mr. Jenner, will we be getting to listen to the tape before 11:30?

Mr. JENNER. We think at approximately that time, or about a quarter of 11; yes. And we do not plan to play any more than the one tape, plus the telephone conversation this morning.

I have a comment or two, giving you a preliminary overall. This is with respect to ITT, International Telephone & Telegraph Co. It is a large conglomerate, as you well know, listed in the May 1970 Fortune Magazine as the ninth largest corporation in the United States in the year 1969 in terms of total assets. Before it began its aggressive domestic acquisition program in the early 1960's, it was principally an overseas operator of telecommunications equipment.

In the recent May 1974, issue of Fortune, it is listed as the eighth largest manufacturing corporation in the United States, also in terms of assets, despite its having sold off some assets, but not all at the moment as required under the settlement agreement in the meantime.

Canteen Corp. will be mentioned, substantially at the outset. It is a Chicago-based national supplier principally of in-plant coin operated vending machines.

Now, the thrust of the presentation generally is that in late February and early March 1972, columnist Jack Anderson published some articles, as you recall, respecting the settlement of the ITT cases, allegedly, according to him, in return for ITT assistance in the then pending making of San Diego the Republican Convention headquarters. That will be discussed during the course of the presentation.

Next, important to you, and to us, we believe, is the consideration we will give to the Senate Judiciary Committee hearings respecting the confirmation of Richard Kleindienst as Attorney General of the United States.

Now, there are really three areas. We will cover first the cases themselves, that is the antitrust suits that were filed, and the circumstances surrounding the filing of those cases. The next is the San Diego convention events. The third, Mr. Kleindienst's confirmation proceedings, and the misstatements made during the course of that testimony. And I do not use the word perjury, but there were misstatements made at least. And then the fourth area will be in sequence the efforts to withhold, at least until after the election, ITT documents, first from the SEC and later from the House Interstate and Foreign Commerce Committee, the special committee of that committee on investigations, chaired by Congressman Staggers.

I will ask you now at this moment to turn to the other material included in the envelope you received this morning. It is not in your

book, but it was supplied by way of the envelope, and it is the recent letter of Special Prosecutor Leon Jaworski dated May 30, 1974, in which he states, as you will note, that the investigation referred to in his letter of November 27, which is attached to the letter of May 30, relating to allegations of the exercise of improper influence in connection with the SEC and IRS proceedings, as well as other alleged violations by ITT executives will be vigorously pursued, he having in the previous paragraph stated affirmatively that "except as noted below, that part of the investigation relating to allegations of Federal criminal offenses by ITT executives in connection with the settlement of the antitrust cases announced on July 30, 1971, has failed to disclose the commission of any such violations, and although the investigation is not being closed at this time, it is fair to say that there is no present expectation of a disclosure of such offenses."

The presentation to be made to you today does not direct itself to, nor do we have any proof to contradict Mr. Jaworski's statement in that letter. We do not direct ourselves to that. We direct ourselves to that which I outlined to you, the four basic items, especially the latter two, being the Richard Kleindienst confirmation proceedings before the Senate Committee on the Judiciary, and the matter of the withholding of ITT documents from the SEC and subsequently from Mr. Staggers' committee.

The other document in the envelope, if I may pass that for the moment, we will reach a paragraph dealing with Lieutenant Governor Reinecke of California, and I will refer you to that again at that particular point.

Now, I think it would be helpful if I just gave you a birds-eye view at the moment of section 7 of the Clayton Act. We will deal more fully with it at a later point. But, to refresh your recollection, section 7 of the Clayton Act proscribes, "corporate mergers and acquisitions where the effect thereof may be to substantially lessen competition in any line of commerce, in any section of the country," and that is 15 U. S. C. 18.

The issues involved in the ITT cases, and also in the *Goodrich-Northwest Industries* case, in which I represented Northwest Industries, was whether—that case is all over by the way, dismissed by the Department—whether section 7 embraced and fully covered Mr. McLaren's theory in the *Northwest Industries-Goodrich, Canteen, Hartford Fire*, and *Grinnell* cases. He believed that a conglomerate merger, which is a merger where the corporations are not at the outset in actual or potential competition, customers or suppliers could violate section 7. He was concentrating on reciprocity, the deep pocket theory of the aggregation of large assets, when you merge with all that capital, then instead of forcing the aggregation of capital itself to go into the business of the corporation acquired, which he believed to be a sound economic theory, that the potential competitor comes merged into the aggregated capital preventing others, because of that large aggregation of capital, from seeking, with the expense and capital needed, to enter the field. He thought that the common merger, especially major corporations, may lessen competition by entrenching the leading position of these firms in markets in which they operate. This was a new theory, and raised for the first time in the four cases I have indicated to you.

As I say, we will elaborate on that somewhat more as we go along.

I think Mr. Doar—by the way, I do want to say as we move along you will find some problems dealing with our obtaining access to IRS materials. We have not been able to do that because we have not been able to induce the House committee to permit us to examine those documents, but we are proceeding along those lines.

All right, ladies and gentlemen, if you will turn to paragraph 1, Mr. Gekas will read the paragraph.

Mr. GEKAS. Mr. Chairman, members of the committee, paragraph 1. By memorandum dated April 23, 1969, from Deputy Attorney General Richard Kleindienst, acting as Attorney General, and Assistant Attorney General Richard McLaren, head of the Antitrust Division, to John Ehrlichman, counsel to the President, Kleindienst and McLaren urged approval of the commencement of an antitrust action against the International Telephone & Telegraph Corp. (ITT) challenging its acquisition of Canteen Corp. Commencement of the suit was approved and on April 28, 1969, the suit was begun in the U.S. District Court for the Northern District of Illinois.

And there is a footnote to the second line. Because Attorney General John Mitchell's former law firm had represented an ITT subsidiary, Mitchell recused himself and Deputy Attorney General Kleindienst acted as Attorney General in connection with the litigation.

Mr. JENNER. Ladies and gentlemen, Attorney General Mitchell recused himself in the spring of 1969, immediately prior to the time that the *Canteen* case was commenced on April 23, 1969.

Now, there is some interesting data which we would like the committee to keep in mind as we are proceeding here. Mr. Mitchell became a partner in the New York law firm, nationally known, of Mudge, Rose, Guthrie & Alexander. But at the time he became a partner it was Nixon, Mudge, Rose, Guthrie & Alexander. And he became a partner on the first of January 1965.

Mr. Nixon was admitted to the practice of law in New York on December 13, 1963, and became a partner in the Mudge, Rose firm, and the name was changed to add his name as the first name on January 1, 1964, and that is the year before Mr. Mitchell became a partner in that law firm.

Now, you will notice that when the President was elected in 1968, and Mr. Mitchell became Attorney General-designate, that firm announced that both Mr. Mitchell and President Nixon had withdrawn as partners in the firm on January 1, 1969. So that President was a partner in that law firm for a period of 5 years, and Mr. Mitchell a partner in that law firm for a period of 4 years, during all of which, of course, Mr. Nixon was a partner.

Now, you will notice also that Mr. Mitchell's statement of recusment was that the firm had represented an ITT subsidiary. This representation, of course, was also during the period that Mr. Nixon was a partner in that firm. The major law firm of the I.T. & T. Co. is Davis, Polk & Wardwell of New York City, of which Lawrence E. Walsh, sometimes called Larry, sometimes called Ed, former Deputy Attorney General of the United States and former U.S. district judge, is a partner. And as we go along you will find memoranda to which we will call your attention from Mr. Walsh, presented in connection with the settlement of the ITT case. Tab 2.

Mr. DOAR. Mr. Jenner, could I make one comment?

Mr. JENNER. Sure.

Mr. DOAR. I would like to direct the committee's attention to 1.1, not for the purpose of the substance of the memorandum, but for the fact that the Deputy Attorney General in charge of the Antitrust Division was sending a memorandum to Mr. Ehrlichman, counsel to the President, asking for approval to file this antitrust suit.

Now, I do not suggest, members of the committee, by calling your attention to this, that Presidents of the United States do not get involved in the decisions involving actions of the Department of Justice. It seems to me quite appropriate that the President should get involved with policy decisions of the Department of Justice. And from my experience in the Civil Rights Division, when I was Assistant Attorney General there, it was that by reason of the relationship of the Attorney General and the President, I would have no doubt that on major cases involving civil rights matters that the President did put his stamp of policy on the decision. But, I think that this practice of sending a memorandum to a counsel to the President from an Assistant Attorney General, rather than to the Attorney General, or the Attorney General-designee, is one that was not a practice that I was familiar with when I was in the Department.

And I think it points out or suggests the stature, the stature that Mr. Ehrlichman had in President Nixon's administration, as counsel to the President. He was approving the initiation of a particular lawsuit filed by the Department. As you notice in the last paragraph of that, both Mr. Kleindienst and Mr. McLaren signed one page, I believe it is 6, and the last paragraph says, "Accordingly, we urge that the proposed suit be approved."

I make this point, as I say, to suggest Mr. Ehrlichman's stature, as well as the method by which President Nixon organized the operation of the execution of the laws of the United States within the executive branch of the Government.

Mr. DRINAN. Point of information. In the third to the last line it says the suit was approved. What precisely does that mean, and is there written documentation giving approval?

Mr. JENNER. Father Drinan, we attempted to find a letter approval or writing approval by Mr. Ehrlichman to either Mr. Kleindienst or Mr. McLaren, but we have not been able to find one. In a subsequent tab, Richard McLaren's memorandum, and the tab is 1.2, if you will turn to it, ladies and gentlemen, page 1237—

Mr. DRINAN. Is that all you have?

Mr. JENNER. That is all we have at the moment, yes. It is Mr. McLaren's report to Mr. Kleindienst that the filing of the suit has been approved.

Mr. DRINAN. Do you mean to state though in the beginning that the commencement of the suit was approved by Mr. Ehrlichman?

Mr. JENNER. That is what we mean to imply, to be properly inferred from the evidence that we have.

Mr. DRINAN. Thank you.

Mr. JENNER. In connection with tab 1.1, turn to the second page of Mr. McLaren's memorandum to Mr. Ehrlichman, and he does summarize in the first full paragraph his theories. And you will get a birds-eye view there of his theories.

I would like to supplement the remarks made by John. Later on you will notice that there arises a difference of opinion couched and flavored in a milieu that Mr. McLaren's theories, with respect to conglomerate mergers, were at odds with administration policy. So, it is of some significance here that as early as March or April 23, 1969, before the suit was filed, that a memorandum went to Mr. Ehrlichman asking approval of the commencement of the suit, with Mr. McLaren's memorandum stating rather fully his theories with respect to the proposed ITT-Canteen suit.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTI. I would like to inquire of counsel. Since suits of this magnitude apparently went to Mr. Ehrlichman for his approval before filing, what efforts, if any, has counsel made to ascertain what other suits were cleared with Mr. Ehrlichman before they were filed?

Mr. JENNER. I think a direct response to that is we have not made an effort in that connection, and your suggestion is a good one, and we will do so.

Mr. LATTI. Thank you.

Mr. JENNER. Tab 2.

Mr. GEKAS. Paragraph 2, on August 1, 1969, two antitrust suits similar to the Canteen suit were commenced in the U.S. District Court for the District of Connecticut challenging ITT's acquisition of the Hartford Fire Insurance Co. and Grinnell Corp.

Mr. JENNER. In that connection, Hartford Fire Insurance Co. is a Connecticut-based national insurance company. In 1969, Hartford headed a group of 10 insurance companies whose total assets were \$1,891,700,000. In 1969, Grinnell Corp. was the largest manufacturer and installer of automatic sprinkler systems in the United States. We have not got a tab on it, but because we thought it was not particularly enlightening, but there was a motion for a preliminary injunction in both the *ITT* and the *ITT-Hartford* cases, and those motions were denied after hearing on April 21, 1969.

Tab 2.3, the last page, you will notice there that in his handwriting—not in his handwriting, but appended on the original and reproduced here, that Mr. Kleindienst himself on June 23, 1969, approved the commencement of the *Hartford Fire Insurance Co.* case. And then—

Mr. BUTLER. Excuse me. Who did you say approved it?

Mr. JENNER. Mr. Kleindienst. And there are then, and still in tab 2.4, if you turn to the last page, you will see there is Mr. Kleindienst himself's signature on the 25th of July 1969, approving the commencement of the *Grinnell* case.

Now, we have, Congressman Latta, and ladies and gentlemen, no memorandum of a request by Mr. McLaren or Attorney General Kleindienst to Mr. Ehrlichman requesting authorization to commence the *Hartford* case, the *Hartford Fire* case, or the *Grinnell* case, unlike the initial suit which was against Canteen Corp. Tab 3.

Mr. GEKAS. Paragraph 3, during 1969, 1970, and 1971, Harold S. Geneen, president of ITT, met on numerous occasions with White House staff members, other administration officials, and Members of both Houses of Congress to discuss various matters, including international monetary policy, the Office of Foreign Direct Investment Policy, antitrust policy, balance of payments, revenue sharing, and

expropriation by foreign governments. During the summer of 1969, Geneen sought a personal meeting with the President to discuss the ITT antitrust cases. His request was denied because the President's advisers thought that such a meeting was inappropriate.

Mr. JENNER. Now, you will note under that, under tab 3.1, where Mr. Geneen's meetings appear from the schedule on page 779 of 3.1, they occurred after the filing of the lawsuits in late 1969, with the exception of an early 1969 meeting with then Secretary of Commerce, Maurice Stans.

Also in 1970 Mr. Geneen attended two dinners with other prominent American businessmen, one at the White House, and one on board the Presidential yacht, the *Sequoia*, where he was seated next to the President.

In an April 19, 1971 conversation which he will play for you between the President, Ehrlichman, and Secretary Shultz, the President stated that he had met Mr. Geneen on two occasions.

Mr. SEIBERLING. Mr. Chairman, I do not know where in this 3.1 these references are. Could you tell us?

Mr. DOAR. Page 780.

Mr. JENNER. Page 780. You see that list of meetings on printed page No. 780 under tab 3.1? It is the last page.

Mr. SEIBERLING. Where is the reference to the yacht, *Sequoia*?

Mr. JENNER. Let me see, what one was that? We had the proof of the meeting at the yacht *Sequoia*, including the seating chart, which we obtained, and we decided that we would be highlighting that meeting too much if we included it under the tab, and so I decided that we would report it to you orally. If anybody desires to see the seating chart and that particular material, we will be delighted to furnish it to you. It is over in the staff headquarters.

Mr. SEIBERLING. What was the date of that?

Mr. JENNER. I beg your pardon?

Mr. SEIBERLING. What was the date of that?

Mr. JENNER. July 17, 1970.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I thought you said that the President had met twice, or that Mr. Geneen had been in two dinners with the President. You mentioned one date. Do you have the other date for us?

Mr. JENNER. In early May 1970.

Ms. HOLTZMAN. Thank you.

Mr. JENNER. That was the second one.

Mr. RAILSBACK. Mr. Chairman? Mr. Chairman, I wonder why we do not have that meeting on the *Sequoia*? I heard the explanation about the seating chart and so forth, but I wonder why Geneen did not list it?

Mr. JENNER. Well, I cannot answer that, Congressman Railsback. He just did not list it. The proof that we have of the *Sequoia* is a letter from Mr. Geneen to the President thanking him for the dinner aboard the *Sequoia*. As I say, we did not want to highlight that too much, and so we did not include it in the tabs. But, we do have it at the headquarters.

As you go through the material you may have a question in your mind under tab 3.3, if you will please turn to that, the first paragraph.

That is a memorandum from Mr. Chapin to Mr. Flanigan, and that first paragraph said, "In accordance with the recommendations that you set forth in your memorandum—attached—we have not scheduled an appointment for Harold Geneen of I.T. & T." We do not have that memorandum and have not been able to obtain a copy of it. It occurred to me that you might wonder why it was not included, and that is the reason. Tab 4.

Mr. GEKAS. Paragraph 4, during September 1969, Col. James Hughes, military assistant to the President, spoke with Dita Beard, an ITT lobbyist, about the pending antitrust suit. Hughes reported on the conversation in a memorandum to Ehrlichman dated September 19, 1969.

Mr. JENNER. And that is tab 4.1, and you will notice that it is a report from Colonel Hughes to Mr. Ehrlichman. In the second paragraph, last sentence, the colonel recites, "The ITT position is that they have done nothing wrong and, in particular, have violated no policy of this administration. On the emotional side, Dita cites a heavy financial support given by I.T. & T. to the President's election."

In the last paragraph, however, "I repeat, my role was simply a hand holding one, and no commitment whatsoever was made. If you have a salving comment, I will pass it on. If not, I'll just ride it out." Paragraph 5.

Mr. SEIBERLING. Mr. Chairman, it seems to me going back to paragraph 3 that the summary is misleading insofar as it says that Geneen's request was denied because the President's advisors thought such a meeting was inappropriate. It conveys the opposite impression from the one conveyed in the fact of the *Sequoia* meeting which was mentioned in the summary, because he ultimately did get some sort of contact with the President and apparently he had two meetings. And I wonder if that tab or that summary should not be corrected to indicate that.

Mr. DOAR. Congressman, I have thought about that. It seems to me that you can make, you might make too much about meetings with business leaders at the White House, dinners where there may be 15, 20, 25, or 50 business leaders throughout the country called in to hear some kind of a briefing on high Government policy. This was a practice that not only just President Nixon engaged in, but other Presidents have as well, and there is no indication that we have that there was any discussion of business by Mr. Geneen and the President at that time.

The CHAIRMAN. I would also like to comment that the sentence refers to a personal meeting being sought by Mr. Geneen, which was denied. The other was reference to being aboard the *Sequoia* with other people, so I think that the summary is certainly not misleading.

Mr. LATA. Mr. Chairman? Mr. Chairman, if I may just comment, it seems to me like we are going very far afield here, and maybe this is one of the reasons it is taking too much time. We are skipping by a lot of material here that we are not even reading. Then I notice that they even have material in here where they have discussed I.T. & T. with Members of Congress, and they mention a couple of members of this committee. And I do not think that the staff should be getting into areas like this, and we are not investigating Members of the

Congress. It seems like we could speed up our inquiry if we would stay on target.

Mr. EDWARDS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. I notice in the Colonel Hughes' memorandum that Dita "cites a heavy financial support given by I.T. & T. to the President's election." That must have been the 1968 election, and I presume it was individual money given by Geneen and officers, not money given by the corporation itself, and do we know how much was given by the individuals?

Mr. JENNER. Our understanding, Congressman Edwards, is that it was personal support, and it is an understanding, we do not fully know. We have no information, however, at the present moment, that I.T. & T. as a corporation gave heavy financial support to the President in the 1968 campaign.

Mr. McCLORY. Mr. Chairman?

Mr. JENNER. This letter is Colonel Hughes' statement of a conversation he had with Dita Beard.

Mr. EDWARDS. Thank you.

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Do we have information that the President was on the *Sequoia* when Mr. Geneen went on his little trip?

Mr. JENNER. Yes, we have. As I said, we have Mr. Geneen's letter to the President thanking him for being included at that dinner.

Mr. McCLORY. And that is not included among the memoranda here, is it?

Mr. JENNER. No. We did not include it for the reason, as I stated, we are attempting to avoid any exaggeration. There were 21 businessmen and government officials at that particular dinner, including, for example, Mr. McClory and Mr. Railsback, as you may know, W. Clement Stone.

Mr. SMITH. Mr. Jenner, did you state that there was a seating chart of that dinner with Mr. Geneen, showing Mr. Geneen sitting next to the President?

Mr. JENNER. I did, sir. To his left. Are we on paragraph 5?

The CHAIRMAN. Mr. Jenner.

Mr. GEKAS. Paragraph 5, in August 1970, officials and representatives of ITT held five meetings with administration officials including Vice President Spiro Agnew, Secretary of Commerce Maurice Stans, Assistant Attorney General McLaren, and White House Counsel John Ehrlichman and Charles Colson to discuss antitrust matters in general and the ITT antitrust litigation in particular. In another meeting, Geneen and Attorney General Mitchell met to discuss overall antitrust policy with respect to conglomerates. At these meetings and in subsequent letters and memoranda, ITT officials sought to persuade administration officials that McLaren's antitrust views, as reflected in his conduct of the ITT litigation, were ill-advised and inconsistent with the administration's antitrust policy.

Mr. JENNER. In connection with this particular paragraph, you will note that the meeting being cited here was one between Mr. Geneen himself and Attorney General Mitchell to discuss overall antitrust policy with respect to conglomerates.

Turning to tab 5.1, that is a memorandum from Mr. Hullin of Mr. Ehrlichman's staff to Mr. Ehrlichman. You will notice in the first paragraph, "Mr. Gencen was one of several businessmen to have dinner with the President onboard the *Sequoia* on July 17, 1970. Following this dinner, his office called and requested a meeting with you. Chuck Colson has tried to handle this, but Gencen insists on seeing you."

So I was in part mistaken when I said the only evidence was the seating chart. We do have a tab with respect to the *Sequoia* meeting, which is 5.1, this report.

I will not discuss numbered paragraphs A, B, C, and D because they are tabbed separately. The antitrust position mentioned under paragraph lettered A appears at 5.2 under this paragraph.

Paragraphs B, C, and D are reproduced under tab 5.3 under this particular paragraph.

Now, if you will turn, please, to 5.4, it is a letter to or report, a memorandum dated August 7, 1970, from Edward J. Gerrity, vice president for public relations, to then Vice President Spiro T. Agnew.

I will read the whole paragraph:

I deeply appreciate your assistance concerning the attached memo. Our problem is to get to John the facts concerning McLaren's attitude because, as my memo indicates, McLaren seems to be running all by himself.

The "John" named in the second sentence is Attorney General John Mitchell. The memorandum is the second document under this tab.

Mr. COHEN. How do you know it is John Mitchell as opposed to John Ehrlichman?

Mr. JENNER. We take it from the context of the subsequent memorandum, which is in your tab under this particular covering memo from Mr. Gerrity to Mr. Agnew.

Mr. MEZVINSKY. Mr. Chairman.

Mr. Jenner, I just want to understand, when we go over these memos, are these the political memos that were all gathered, the 13 political memos that were covered? Is this totally separate from anything that the SEC had or that was involved in that investigation or Mr. Colson's memos that were written concerning this matter?

I am just concerned that when we refer to memos, whether we are referring to something separate or whether this is part of, as a result of the Dita Beard memo by Jack Anderson that the SEC got 13 more memos from the White House.

Mr. DOAR. One of the points that is made later is that some of these memos were not made available to the Senate Judiciary Committee during the time of the confirmation hearings. At a later tab in the book, we point out which of these earlier memos were not made available in spite of the fact that Senator Eastland requested all the memos be furnished.

Mr. MEZVINSKY. Do we have all those memos, including the White House memos as well, the four to six memos concerning the ITT as well as Colson's memo?

Mr. JENNER. Yes, we do.

Mr. MEZVINSKY. We will come to that, is that right?

Mr. JENNER. That is correct.

Mr. MEZVINSKY. OK, fine.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Had there been a change of policy dealing with the mergers in this administration along about this time, or preceding this time?

Mr. JENNER. As against the previous administration, sir?

Mr. LATTA. Right.

Mr. JENNER. Yes sir.

Mr. LATTA. I think it would be a good idea to explain that, because I read about it here but I do not see anything about it.

Mr. JENNER. Yes. At a subsequent tab, we will call that to your attention.

Mr. LATTA. Thank you.

Mr. JENNER. Tab 5.6 is a memo from Mr. Hullin to Mr. Ehrlichman. You will notice he cites regarding: "Ehrlichman's meeting with Mr. Geneen, ITT."

The second paragraph is of importance:

He indicated that there was nothing of significance that needed to be passed along; however, he did indicate that he had discussed some of the contents of this meeting with the Attorney General. Perhaps the Attorney General could give you more specific guidance.

That is Attorney General Mitchell.

Mr. BUTLER. Where did you just read from?

Mr. JENNER. I read from tab 5.6. There is one item under 5.6.

Mr. BUTLER. Thank you.

Mr. JENNER. These were matters discussed in Mr. Ehrlichman's meeting with Mr. Geneen in August 1970 and the memorandum is in response to Mr. McLaren's request for information contained in the last paragraph of Mr. McLaren's August 3, 1970, letter to Mr. Hullin, which you will find if you will return to tab 5.3.

Tab 5.3 is Mr. McLaren's letter to Mr. Hullin administrative assistant, which says: "I would appreciate a call or a note after the meeting giving me any information that you properly can relative to the antitrust aspects of the discussion."

You will notice in the left-hand margin there appears the printed word, "action." That was White House practice of indicating that the request had been carried out. When it is stricken out by the up and down lines, it indicates that it had in fact been considered.

Mr. FISH. Is this tab 5.3 you are referring to now?

Mr. JENNER. Yes.

Now, if you will turn to tab 5.7, which is on an ITT letterhead from Thomas Casey, director of corporate planning, to Mr. Colson, dated August 7, 1970, the transmittal memo appears at tab 5.8 and the Colson transmittal memo was sent by Mr. Ehrlichman's aide to John Mitchell. That memorandum confirming that appears at tab 5.9.

Turning to the first page of 5.7, the letter in question, I direct your attention to the third full paragraph:

During his meeting with Attorney General Mitchell, Mr. Geneen and the Attorney General both agreed that because of the recent changes in the tax law, the decision of the Accounting Principles Board and the depressed state of the stock market and economy, the merger waive was over and we would not see such happenings again. The Attorney General stated that it was not the intent of the Department of Justice to challenge economic concentration or bigness per se, or big mergers as such. During Mr. Geneen's conversation with

Mr. Ehrlichman and you, he was told that the President himself has stated that bigness as a merger consideration is not the policy of his administration.

Then on the second page, I will not read it, but I direct your attention to the first full paragraph, beginning:

Mr. McLaren said he thinks he has a reciprocity case, but that is "only half the case and even if we did not have that, we would still be proceeding against ITT anyway" because of ITT's series of acquisitions.

Then Mr. McLaren states several.

At the bottom of the page, the last paragraph, I call your attention to the sentence:

It seems plain that Mr. McLaren's views were not and are not consistent with those of the Attorney General and the White House as expressed to us.

Turn, if you will, to tab 5.8, which is a memorandum from Mr. Colson to Mr. Ehrlichman dated August 10, 1970. I call your attention to the middle paragraph which recites:

If, indeed, the facts here are correct then we may be riding one horse and McLaren another.

Tab 5.9 is a memorandum for the Attorney General from Mr. Hullin, stating that:

John Ehrlichman has asked me to forward the attached material and request that you call him once you have had a chance to review it.

The attachment is the August 10 memo from Mr. Colson to Mr. Ehrlichman including the August 7 letter from Mr. Casey of ITT including excerpts from "stipulated statement of facts" filed by the Justice Department in the LTV-Jones and Laughlin case.

Mr. BUTLER. I have just become aware of these notations here, "Eyes only" that float around on these memorandums. Was that the general practice in communications of this nature, or do we have any observation?

Mr. JENNER. It was the general practice and you will find on previous memoranda to which we have already directed your attention that the "Eyes only" notation appears and it appears on other subsequent memoranda.

Mr. BUTLER. I thank you.

Mr. JENNER. We have interpreted that to mean and our understanding is, and it is only our interpretation and our understanding, that the memorandum is only for the person to whom it is directed, for his or her eyes only. We do not know the significance beyond that. We do not mean to imply anything beyond that.

Tab 5.11, printed page No. 540, is Mr. John Mitchell's testimony during—some of his testimony before the Richard Kleindienst confirmation proceedings. In the light of that to which we have called your attention—

Mr. SMITH. Is that tab 5.10?

Mr. JENNER. Did I say 11? I am looking at the 11 to my right. It is 5.10. I am sorry, printed numbered page 540. He testifies:

My second contact with Mr. Geneen was on August 4, 1970, in my office. My office calendar shows that this meeting could not have lasted more than 25 minutes. It might have been shorter. The meeting was held at Mr. Geneen's request to discuss the overall antitrust policy of the Department with respect to conglomerates. I sent Ed to the meeting on the express condition that the

pending ITT litigation would not be discussed. Mr. Geneen agreed to this condition. The pending ITT litigation was not discussed at this meeting.

Then in the second paragraph after that :

I never discussed the content of my conversation with Mr. Geneen with any member of the Department, nor did I communicate with any of them about it.

Now, turn, if you will, to tab 5.12, which involves the hearings before Congressman Staggers' subcommittee. We direct your attention to printed page 154 respecting the personal confidential memorandum to Mr. Merriam of the Washington Office of ITT, from Mr. Ryan also an ITT person. The first sentence of that is: "You know of my call on Stans on the 19th—you have a copy of my note covering the visit which I sent to Ned"—the Ned there is Mr. Gerrity—"and HSG's"—that is Mr. Geneen—"call to me of the 20th."

All we wish to direct your attention to there is that we do not have the note mentioned in the parenthetical statement in that line. Mr. Doar.

Mr. DOAR. Members of the committee, I again would like to call your attention to the chronology here. The suit was filed against the Hartford merger on August 12. Now, that merger, as you all know, involved a great deal of money and potentially had the promise of tremendous profit for ITT. Mr. Geneen met with Mr. Mitchell on the 4th—I was wrong on my dates. The suits were filed in 1969 and the meetings were 1 year later, August 4, 1970. The point still is, and the point I wanted to make, was that the discussions with respect to some of the substance of the suits were carried on with Mr. Ehrlichman in the White House with respect to the matters that were pending between the Department of Justice and ITT.

Mr. JENNER. Thank you.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. May I ask this question: Did you review the report of proceedings of the ITT investigation conducted by this committee in 1969?

Mr. JENNER. Yes.

Mr. McCLORY. I think we filed a report in 1970.

Mr. JENNER. Yes, we did.

Mr. McCLORY. We went into this exhaustively with regard to the Hartford Insurance Co. acquisition.

Mr. JENNER. Yes, we did, Congressman McClory. Paragraph 6.

Mr. GEKAS. On September 15, 1970, the trial in *ITT-Grinnell* began. In memoranda dated September 17, 1970, from Ehrlichman to Attorney General Mitchell, and October 1, 1970, from Colson to Ehrlichman, the ITT litigation was discussed. Ehrlichman and Colson stated their concern that McLaren's conduct of the ITT cases constituted an attack on "bigness per se" contrary to the administration's expressed antitrust policy.

Mr. JENNER. Under tab 6.2, you find Mr. Ehrlichman's memorandum of September 17, 1970, to Attorney General Mitchell, in which he expresses his disappointment in learning that the case had gone forward on the part of Mr. McLaren. As he said:

The gravamen of the case remains "largeness" which is contrary to the understanding that I believe you and I had during the time that we each talked to Mr. Gineen.

I think we are in a rather awkward position with ITT in view of the assurances that both you and I must have given Gineen on this subject.

The typographical misprisions I have read because I read a quote and do not mean to attribute to Mr. Ehrlichman any typographical misprisions.

Under tab 6.2, on October 1, 1970, in a memorandum from Mr. Colson to Mr. Ehrlichman, Mr. Colson referred to a recent speech by Mr. McLaren before the Council on Antitrust Regulations and noted that his views on bigness per se are manifested by his conduct with the ITT cases and were not those of the administration. Tab 7.

Mr. GEKAS. Tab No. 7, the trial of *ITT-Grinnell* was completed on October 26, 1970, and the case was taken under advisement. A judgment for ITT on the merits was rendered on December 21, 1970. A notice of appeal was filed on March 1, 1971.

Mr. JENNER. We have included under tab 7 Judge Timber's opinion on the *ITT-Grinnell* case and the docket of the case before the U.S. District Court. Tab No. 8.

Mr. GEKAS. On March 3, 1971, at ITT request, Geneen and William Merriam, ITT Vice President and Director of Washington Relations, met with Ehrlichman to discuss antitrust matters.

Mr. JENNER. Ladies and Gentlemen, you will notice in preceding tab 7 that the Department filed a notice of appeal on March 1, 1971, and 2 days later, at the request of ITT's Mr. Geneen and Mr. Merriam, Vice President and Director of Washington relations, arranged a meeting with Mr. Ehrlichman to discuss antitrust matters. You will note under tab 8.1, which is Mr. Ehrlichman's log, that that meeting was held with Mr. Geneen and Mr. Merriam at 10 o'clock, Wednesday, March 3, in the morning. And it was at the request of Mr. Geneen. Tab 9.

Mr. GEKAS. On March 24, 1971, on the motion of Solicitor General Erwin Griswold, the time for the government to perfect its appeal in *ITT-Grinnell* by filing its jurisdictional statement was extended from March 31, 1971, to April 20, 1971.

Mr. JENNER. Now, the reasons given by Solicitor General Griswold are stated in the last paragraph of page 2 of 9.2 as follows:

The Solicitor General has not finally decided whether to proceed with the appeal. The additional time is needed for him to study the case further and, if he decides to proceed, to prepare and print the jurisdictional statement.

Now, during February and March, there was an exchange of memorandums between the Antitrust Division and the Solicitor General's office reflecting that the Solicitor General and his staff were doubtful that Mr. McLaren's theories could be successfully maintained before the U.S. Supreme Court, but nevertheless the appeal was authorized by the Solicitor General Griswold on March 26, 1971. The word "nevertheless" is mine. I do not mean to attribute anything by my use of it. Paragraph 10, please.

Mr. GEKAS. On March 30, 1971, Merriam and Thomas Casey, ITT Director of Corporate Planning, met with Peter Peterson, Assistant

to the President for International Economic Affairs, to discuss a wide range of subjects including antitrust matters.

Mr. JENNER. You will find under tab 10.1 an affidavit of Peter Peterson's dated April 19, 1974. Under paragraph No. 3, you will notice Mr. Peterson states:

At the insistence of John D. Ehrlichman, I met on March 30, 1971, with William R. Merriam and Thomas H. Casey, both officials of the International Telephone and Telegraph Company (ITT). We discussed a wide range of subjects, including the Office of Foreign Direct Investment, company earnings abroad and general antitrust matters.

Paragraph 11.

Mr. GEKAS. At the request of Ehrlichman, who said he spoke for the President, Peterson met with Geneen and Merriam on Friday, April 16, 1971. They discussed various subjects relating to economic policy, including overall antitrust policy related to bigness at the end of the meeting, Geneen and Merriam discussed ITT's specific antitrust problems, including the fact that the deadline for the Government to perfect the *ITT-Grinnell* appeal was the following Tuesday, April 20. After the meeting, Peterson telephoned Ehrlichman and reported on the meeting, including the discussions of the *ITT-Grinnell* appeal. Ehrlichman indicated to Peterson that action was underway to postpone the appeal. The following week, Peterson reported to the President on the meeting and his subsequent telephone call to Ehrlichman.

Mr. JENNER. At 11.1, you will find Mr. Peterson's affidavit again, and we direct your attention to numbered paragraph 4 of that affidavit, in which he states:

At some time after April 8, 1971, Mr. Ehrlichman told me that the President wanted me to meet with Mr. Harold S. Geneen, President of ITT. I believe Mr. Ehrlichman said antitrust matters were one of the things he wanted to talk about. Pursuant to those instructions, I met with Messrs. Geneen and William R. Merriam on April 16, 1971 at about 2:30 p.m. For most of our 30 or 40 minute meeting, we discussed a wide variety of general subjects dealing with the declining international economic position of the United States, technology, productivity, capital controls abroad and overall antitrust policy relating to "bigness". At the end of the meeting, Messrs. Geneen and Merriam briefly discussed ITT's specific antitrust problems, including the fact that the deadline for the *ITT-Grinnell* appeal was approaching.

5. After the meeting I telephoned Mr. Ehrlichman to report on the meeting and mentioned their reference to the *ITT-Grinnell* appeal. To the best of my recollection, he told me that the situation—

"He" meaning Mr. Ehrlichman—

Was well in hand, or under control, and, in any event, he indicated that action was underway to postpone the appeal.

Under tab 11.2, you will find a memorandum from Mr. Peterson himself to the President dated April 23, 1971. We wish to direct your attention in that connection to the first page of that memorandum for the President from Mr. Peterson. Paragraph 1, antitrust.

You asked me to meet with Hal Geneen of I.T. & T. on antitrust. In the course of that discussion, he informed me that Justice was about to make an appeal to the Supreme Court that had very wide-ranging policy implications.

I immediately called John Ehrlichman and I understand action had been taken to at least postpone this action.

"Per your suggestion, I have also shown"—that paragraph is irrelevant. Paragraph 12.

Mr. McCLODY. Mr. Chairman, could I ask this?

The CHAIRMAN. Mr. McCLODY.

Mr. McCLODY. This is the first affidavit that I have noticed having been taken by the staff. Would you just explain to me, did Mr. Peterson come down here and give this affidavit at our staff headquarters?

Mr. JENNER. He came down, Congressman McCLODY. We interviewed him and he returned to New York and prepared the affidavit and sent it to us. So the affidavit is his and his alone.

Mr. McCLODY. The notary public is on our staff?

Mr. JENNER. I beg your pardon?

Mr. McCLODY. Is the notary public on our staff?

Mr. JENNER. It is not. Or she. I do not know whether it is he or she. The notary public is in the District of Columbia, to which Mr. Doar calls my attention.

Mr. McCLODY. Do we not have an employee by that name, Patricia Donovan?

Mr. JENNER. If there is, I do not know it. Mr. Congressman. The affidavit was prepared in Mortmer Caplin's office, we do know that, and not in our headquarters. And it is not our notary public.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Jenner, do we have any indication of when and in what manner the President requested Peterson to meet with Geneen, the first sentence in this memo?

Mr. JENNER. Mr. Peterson advised us that that referred to Mr. Ehrlichman's instructions to him, Mr. Peterson.

Mr. OWENS. Not a personal instruction from the President?

Mr. JENNER. Not a direct instruction by telephone or otherwise.

Mr. OWENS. The notation on here "the President has seen." That is a White House procedure which indicates the President personally saw the memo?

Mr. JENNER. Yes.

Mr. OWENS. Thank you.

Mr. JENNER. Paragraph 12.

Mr. GEKAS. Also on April 16, 1971, Lawrence Walsh, a member of a law firm that had long represented ITT, telephoned Deputy Attorney General Kleindienst. Pursuant to that telephone conversation, Walsh caused to be delivered to Kleindienst a letter and memorandum urging that before the Department of Justice decided to pursue the *ITT-Grinnell* appeal to the Supreme Court, it should undertake a review by all interested Federal agencies of the economic consequences of a Supreme Court decision favorable to the Government. Copies of the Walsh letter and memorandum were delivered later that day to Peterson and Ehrlichman.

Mr. JENNER. Lawrence Walsh, I mentioned in making my prefatory statement, was the Deputy Attorney General of the United States in the Eisenhower administration and formerly a U.S. District Judge prior to that time in the Southern District of New York. This is the firm, the Davis, Polk, and Wardwell firm, which were and still are the principal counsel for ITT. Mr. Walsh, however, had not done work particularly for ITT. Other partners have done so. The request to have Mr. Walsh prepare this material was one made by Mr. Geneen,

that Mr. Walsh undertake to prepare the material and transmit it as stated in paragraph No. 12.

In tab 12.2, commencing at page—I would like to have you turn first to 12.3 instead of 12.2. At numbered page 265, you will find Mr. Walsh's letter printed in full on the Davis, Polk, and Wardwell stationery. It is at some length, but it is printed in full.

Paragraph 13, please.

Mr. FISH. Mr. Chairman, could I ask counsel a question?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Thank you.

I thought I understood you to say—maybe it is right here in front of me and I have just not located it—that there were memorandums between the Solicitor General's Office and the Antitrust Division expressing Mr. Griswold's doubt that the theories of the Antitrust Division would prevail in the Supreme Court?

Mr. JENNER. That is right, sir.

Mr. FISH. Are they contained in these tabs, the evidence and the memorandums themselves?

Mr. JENNER. We do not have it reproduced in the volume, Congressman Fish, although we do have the document itself because we made a pledge of confidentiality with respect to it.

Mr. FISH. Do we have any statement or affidavit from Mr. Griswold that would bear on the question of whether or not this was his personal judgment contained in these memoranda?

Mr. JENNER. Yes, Solicitor General Griswold testified and his testimony is included later and we will direct your attention to it.

Mr. FISH. Thank you very much.

The CHAIRMAN. Mr. Jenner, I would just like to bring your attention to the fact that it is quarter to 12.

Mr. JENNER. At paragraph 14, we have two tapes, Mr. Chairman, and it being quarter to 12, we will undertake to go as fast as we can so we can play the tape before the noon recess.

The CHAIRMAN. Well, it depends on—

Mr. JENNER. By the way, Mr. Chairman, one of those tapes is a half-hour long. Tab 13.

Mr. GEKAS. On Monday morning, April 19, 1971, Kleindienst told Walsh by telephone that Kleindienst did not think the *ITT-Grinnell* appeal would be delayed. In a memorandum dated April 19, 1971, to Kleindienst, McLaren disputed the position taken by Walsh in his letter and memorandum of April 16 and urged that the *ITT-Grinnell* appeal not be delayed.

Mr. JENNER. Paragraph 14.

Mr. GEKAS. Beginning at 3:03 p.m., on the afternoon of April 19, 1971, the President met with Ehrlichman and George Shultz, Director of the Office of Management and Budget. The antitrust actions against ITT were among the subjects discussed. Ehrlichman said that the deadline for the *ITT-Grinnell* appeal was the following day and he reported that, despite his attempts to give the Justice Department "signals", the appeal was being pursued. The President then telephoned Kleindienst and ordered him to drop the appeal. After the telephone conversation, the President expressed his concern that McLaren's actions with respect to conglomerates were contrary to the administration's antitrust policy.

Mr. JENNER. We will play the tape.

Mr. Chairman, ladies and gentlemen, in order to catch the flavor of the tapes, we will play the tape of the meeting up to the time of the telephone call made by the President during the course of the meeting. Then we will play the telephone conversation reflecting both President Nixon's statements to Mr. Kleindienst and Mr. Kleindienst's statement in response. Then we will return to the balance of the tape of the meeting and play through the President's end of the conversation and onward.

We will hand out transcripts first.

Mr. JENNER. Mr. Doar calls my attention to something of importance to which I should call your attention before you listen to the tapes.

In his testimony to the Senate on March 3, 1972, Mr. Kleindienst testified he did not recall why an extension to perfect the appeal through the filing of the jurisdictional statement had been requested. In a testimony which he gave under oath 4 days later on March 7, 1972, Mr. Kleindienst gave a detailed account of the request for the extension but in that detailed account omitted any mention of the President's direction to him in the conversation which you are about to listen to on this tape.

[Whereupon, a tape recording of conversation among the President, John Ehrlichman, and George Shultz, April 19, 1971, from 3:03 to 3:36 p.m., was heard.]

Mr. JENNER. We go now to the telephone conversation itself.

[Whereupon, a tape recording of a telephone conversation between the President and Richard Kleindienst on April 19, 1971, from 3:04 to 3:09 p.m., was heard.]

Mr. JENNER. Now, back to the conversation.

The CHAIRMAN. The committee will recess until 2:30 this afternoon.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Will you kindly return the transcripts.

Mr. JENNER. Mr. Chairman, may I call Mr. Latta's attention to the fact I said there would be reference to the fact of the administration policy, and you will notice that that appeared on the bottom of page 1 and the top of page 2 of the tape.

[Whereupon at 12:25 p.m. the committee was recessed to reconvene at 2:30 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will resume. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman, ladies, and gentlemen.

You will recall when we broke at noon for the noon recess, having listened to the tape of April 19, which covered a period that afternoon from 3:03 to 3:34, approximately, and now we pass to the afternoon of the same day immediately following.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, before we move on, may I just ask where we got the two tapes that we listened to? Were those voluntarily turned over by the White House or were they subpoenaed or what?

Mr. DOAR. They were materials that were given to the Special Prosecutor.

Mr. RAILSBACK. Were they given gratuitously or were they part of his request?

Mr. DOAR. Well, they were a request. I do not believe they were subpoenaed.

Mr. RAILSBACK. But they were requested?

Mr. DOAR. Yes.

Mr. RAILSBACK. Thank you.

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. Mr. Lott.

Mr. LOTT. Could I ask a question too? Mr. Doar and Mr. Jenner, the last portion of that tape, the general discussion about revenue sharing and so forth, did not relate directly to the inquiry. What is your policy on deciding whether or not we will listen to all of the tape? Did you give any consideration in that instance to knocking out the last six or seven pages?

Mr. JENNER. Yes, we did, Congressman, and Mr. Doar and I wish to remark about that.

When we interviewed Secretary Shultz, he advised us that Monday afternoons, when the President was in town, there were what he called unstructured conversations with him, with Mr. Ehrlichman, often including Mr. Haldeman, to review the events forthcoming during the week, and to comment on matters that had occurred in recent times, and to obtain the President's advice and direction with respect to those items. He called these unstructured in the sense that while Mr. Ehrlichman would have his notes, and Mr. Shultz would have his notes as to the items which they wished to discuss with the President, they were not the somewhat formal agenda that particular meetings at other times during the week, when the President had a specific item or items he wished to discuss with Mr. Ehrlichman, or Mr. Haldeman, or them together, or Mr. Colson, or as the case may be.

Also that was an example, that particular tape is a particular example of a so-called unstructured conference with the President. Rather than try and select a number of tapes, conversations to illustrate to you what the unstructured conversations were, we decided that because the tape, in large part related, of course, to ITT, that we would so-call kill two birds with one stone.

But, wholly apart, in addition to that, and Mr. Doar wishes to supplement my comments, it was our joint judgment that that particular tape from the beginning to the end illustrated and demonstrated the President's control over, and I do not mean control in the invidious sense, but the President making the decisions, and being advised, and telling his immediate aides, in this particular tape, Mr. Ehrlichman and Secretary Shultz at that particular time.

We thought that that would be important to you to have that illustration of how the President functioned with respect to his aides, that they did not do things on their own, but the subject matter was discussed and brought up by them to the President, who in turn made the decision.

Mr. LOTT. Are we going to hear other tapes on the ITT related subject matter?

Mr. JENNER. We have just one more.

Mr. LOTT. But we now have seen the structure of these conversations, and in the future will they be more limited?

Mr. JENNER. Yes.

Mr. LOTT. Thank you.

Mr. JENNER. I do not recall. Congressman Lott, if we have another unstructured conversation tape. It could be that we do. I do not recall that we do. I do not think that we do, that we intend to play, in any event. Mr. Doar.

Mr. DOAR. Well, I do not have anything to add to that, Mr. Chairman.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I just want to say that on my own behalf I do not concur in the decision that counsel has made in this respect. And I think the gentleman from Mississippi's question has been very well put, and I would question the necessity of the committee having about 30 of the 35 minutes of that tape, and I do not want to make a point of it except to just indicate my disagreement.

The CHAIRMAN. I may say that counsel discussed the matter with me, and I must say that I do not agree with Mr. McClory's position, so I thought that while it might have been that some portions of it might have been deleted. I think that the trouble in the effort to do so would certainly not be worth it. And I think the conversation in its entirety certainly ought to be considered by the members, and I think the members are prudent enough to consider it in the light in which they read it and heard it. Mr. Jenner.

Mr. JENNER. Paragraph 15. Mr. Chairman, ladies and gentlemen.

Mr. GEKAS. After the President's telephone call, Kleindienst met with McLaren and Solicitor General Erwin Griswold, and directed that the Solicitor General apply to the Supreme Court for another extension of time. At 4:30 p.m., Kleindienst telephoned Walsh and informed him that the Solicitor General was arranging for an extension of time for the Government to perfect its appeal.

Mr. JENNER. The telephone call mentioned in line 1 is the telephone call that you heard on the tape this morning. In the tabs listed under paragraph 15, the testimony of Lawrence Welsh, tab 15.5, you will find Mr. Walsh's testimony that the morning of that day he had a telephone conversation with Mr. Kleindienst in which Mr. Kleindienst told him that it was his judgment that the appeal would not be delayed and would proceed.

The other items are 15.2 through 15.4 which are corroboration of Mr. Kleindienst's testimony listed under 15.1.

As illustrative, if you will look at 15.1, printed page No. 250, Mr. Kleindienst's testimony that he believed that—

Monday was April 19. Mr. McLaren had—what he did with it I don't know, and he prepared to talk about that, but in any event, he called me and said he wanted to talk to me about the Davis, Polk or the Walsh request. He came into my office and we now pieced the thing back together again, and stated that it did not agree with the position taken by Judge Walsh in the memorandum of law and the letter.

If you drop down to the third full paragraph from the bottom: "I believe that the solicitor—

Mr. BUTLER. What page are you on?

Mr. JENNER. Printed page number 250 under tab 15.1.

The CHAIRMAN. After the bells ring again, within 5 minutes, I think the Chair will recess until we vote in the series of votes and then come back.

Mr. JENNER. There are no other items to which I wish to direct your attention under paragraph 15. Paragraph 16, please.

Mr. GEKAS. On Tuesday, April 20—

Mr. JENNER. This is the following day.

Mr. GEKAS. On Tuesday, April 20, 1971, on the motion of Solicitor General Griswold, the time for the Government to perfect its appeal in *ITT-Grinnell*, by filing its jurisdictional statement, was extended from April 20, 1971, to May 20, 1971.

Mr. JENNER. I do want to comment, if you will recall the strident remarks of President Nixon with respect to not filing a jurisdictional statement, that Mr. Kleindienst, instead what he did in reaction was to seek an extension of time within which to file the jurisdictional statement, in order, I suspect, to have things cool off so that he could think a little more about it.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. I object to counsel using the adjective, strident. Did you say strident remarks of the President?

Mr. JENNER. Yes. I tried to use a mild word. I thought that was mild.

Under 16.1, that is the application of the Solicitor General for extension of time. And you will notice the Solicitor General says at the bottom of the page, the first page, and it is not too good a Xerox, what he says there is. "The additional time is needed for further study of the case to permit consultation among various interested government agencies with regard to whether the government should perfect its appeal."

The date for additional study and consultation, as you will recall, is urged in Judge Walsh's letter. Tab 17.

Mr. SEIBERLING. Mr. Chairman, there was a reference to Covington and Burling in the previous exhibit. Who did they represent? Did they represent ITT?

Mr. JENNER. They were trial counsel for Grinnell.

Mr. SEIBERLING. Thank you.

Mr. DOAR. They were trial counsel for ITT?

Mr. JENNER. In the *Grinnell* case.

Mr. SEIBERLING. For ITT. Thank you. It was in 16.2 I believe.

Mr. JENNER. Tab 17.

Mr. GEKAS. Also on April 20, 1971, Felix Rohatyn, an investment banker who was a director of ITT, met with Kleindienst to discuss the economic and financial ramifications of divestiture of the Hartford Fire Insurance Co. by ITT. At the meeting, Rohatyn asked to present these arguments to McLaren, and such a presentation was later arranged for April 29.

Mr. JENNER. Paragraph 18. Now, this is a tape.

The CHAIRMAN. The committee will stand recessed until we have voted on this series of recorded votes. I think it may be a good 30 minutes.

[Short recess.]

The CHAIRMAN. The committee will resume.

Mr. Jenner, will you please proceed.

Mr. JENNER. Thank you.

The CHAIRMAN. If there are not any further interruptions due to legislative business on the floor, the Chair intends to continue until about 6:30 and we will recess for about 10 minutes at 5:30.

Mr. JENNER. Thank you, Mr. Chairman, and ladies and gentlemen.

When the committee recessed we had read paragraph 18. I am sorry. OK, yes, we partially read it. May we read it again, Mr. Chairman?

The CHAIRMAN. Please do.

Mr. GEKAS. On April 21, 1971, the President met with the Attorney General Mitchell and discussed, among other things, the *ITT-Grinnell* appeal. The President said that he did not care about the merits of the case but that the business community believed that the administration was being even rougher on it in antitrust matters than had previous administrations been. Mitchell argued that it was a political mistake to interfere with the appeal. The President agreed to heed Mitchell's advice to permit the appeal to be perfected.

Mr. JENNER. Now, ladies and gentlemen, before you listen to the tape, I would like to highlight a few things. In this tape you will hear Mr. Mitchell advising the President that his initial low regard of Mr. McLaren's theories and Mr. McLaren's position was not as well founded as might be thought when you listened to that conversation. This is only a part of a tape, and it is the last 5 minutes of the tape that is described there in the footnote to paragraph 18. So, we have only a portion. It was given to the Special Prosecutor, and later, after the Special Prosecutor had had it, it was received from the White House.

[Whereupon a tape recording of a conversation between the President and John Mitchell on April 21, 1971, from 4:18 to 6:13 p.m., the last 5 minutes was heard.]

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. You will notice, ladies and gentlemen, that while we understand the last 5 minutes of the tape, we are also concerned that the tape appears to be cut off in the middle of the discussion. That is, you will notice the last three lines: "Now, the other thing I would like—when Ehrlichman called today and said that they put out this network suit of." The network suit involved ITT. "And I don't—and notice—". It was CBS. I am sorry, CBS, not ITT. But, the tape cuts off at that point. We do not know why.

Mr. DOAR. Mr. Jenner said we do not know why. I would expect that the reason was that the Special Prosecutor requested of the White House the conversation relevant to, pertinent to ITT and that is what they were given.

Mr. JENNER. One other comment before proceeding. Paragraph 19 in book 2. I would direct your attention to the fact that it would appear from tab 45, when we reach it, a year later Mr. Mitchell testified under oath before the Senate select committee and denied he had ever talked to the President about ITT. Or it was the Senate judiciary committee, I am sorry, in the Kleindienst hearings. Tab 45 is in the third book and we will reach it in due course. Tab 19.

Mr. GEKAS. During the last 10 days of April 1971, Geneen and Merriam of ITT wrote four letters to administration officials—one to Secretary of the Treasury, John Connally and three to Peter Peterson—containing references to antitrust matters. Two of the letters commented favorably on the *ITT-Grinnell* appeal delay.

Mr. JENNER. Tab 19.1 is the memorandum to “Pete” and that Pete is Peter Peterson. It relates to antitrust in that it includes a detailed memorandum on antitrust which is reproduced for you following the letter, three pages later at the top of which reads, “Memorandum on Anti-trust Policy and Its Relation to the Economic Policy of the United States.”

If you will look at the second document under 19.1, which is the letter to Peter Peterson from Mr. Geneen, on the second page it says “On the subject of our conversation last week, I am attaching a brief note which you may find useful as a summation of one aspect of the problem we discussed,” and that is the four page memorandum which follows.

Tab 19.2 is the ITT letter from Mr. Merriam of ITT to former Governor John Connally as Secretary of the Treasury. And you will notice, if you will, the last paragraph of that letter attributes the appeal delay to action by Mr. Peterson and former Governor Connally and reads “Hal, I am much appreciative of the fact that you were able to see us the other day on such short notice. We are certain that you and Pete were most instrumental for the delay.” They are discussing this with Mr. Peterson. He disavowed that he was most instrumental for the delay.

And he also has advised us in the interview that he never suggested to Mr. Merriam or agreed with Mr. Merriam’s suggestion that former Governor Connally should be contacted.

Tab 19.3 is a memorandum from Mr. Peterson covering—

Mr. McCLORY. Mr. Chairman, excuse me. On 19.2, the part that strikes me as being so significant, if you will permit, is in the third paragraph where it says “The purpose of the visit was to explain to the Deputy Attorney General all the domestic and international, economic ramifications if ITT had to divest Hartford.” I merely call it to your attention, because I know that was a principal subject of the testimony in connection with our committee’s investigation of the ITT conglomerate.

Mr. JENNER. That theme does run throughout these documents, but also in connection with the same theme there also is a direct discussion of the ITT pending suits. These, of course, are all matters that the committee is going to have to resolve in considering the pros and cons of these various documents. We are doing our best to call all phases to your attention.

Tab 19.3, as I say, is a White House memorandum from Mr. Peterson to Mr. Ehrlichman and to Mr. Krogh dated April 27. The letter referred to in that memorandum is the letter of April 26, which is the next document under this tab. The second full paragraph of that we call your attention to. It reads “I am sure you realize that he,”—that is Mr. Geneen—“is concerned about this, and while I tried to assure him that such a bill had very little chance of being passed, he is afraid that the press might grab it and blow it out of proportion, thus

affecting the delicate negotiations we are beginning with Mr. McLaren on Thursday, the 29th." This letter deals with Mr. Celler's—then chairman of the House Judiciary Committee—proposal to introduce legislation that would prohibit the Nation's 500 largest industrial corporations from merging with each other, or in any small companies with outfits of \$100,000 or more.

Now "you might have heard the Attorney General's speech in Savannah almost 2 years ago in which he cited the antitrust policy for the Nixon administration, almost the same thing that Emanuel Celler has proposed. Mitchell said none of the top 200 companies should be allowed to merge. We have alerted Clark MacGregor to this matter, and we plan to generate some speeches ridiculing the chairman's proposed legislation."

The next tab, 19.4, is also an ITT memo from Mr. Merriam, a letter from Mr. Merriam to Mr. Peterson, again dated April 30. And you will notice the name John Ehrlichman is endorsed on the top. We received this document from the White House as well. Also Mr. Krogh's written signature at the top of the document.

The first paragraph we wish to direct to your attention to, says:

Hal Geneen thought you would be interested in seeing a copy of the application for the further extension of the time, which was submitted by Mr. Griswold, as a result, I am sure of action on the part of certain administration principals. Hal is particularly impressed with the last paragraph of the application which states:

"The additional time is needed for further study of the case and to permit consultation amongst various interested Government agencies with regard to whether the Government should perfect its appeal."

That arose, as you will recall, after Judge Walsh's letter or memorandum. The last paragraph of that letter says, "The work you and your associates have done has become highly effective—so much so that the Anti-Trust Division seems to show some evidence of concern. This is a step in the right direction."

Mr. SEIBERLING. Mr. Chairman, I notice that in the third paragraph he says, "We are hopeful that during the next 20 days Paul and the two Johns can convince the Department that the merger policy as now practiced will be suicidal for the economy." Do you know who he is referring to, Paul and the two Johns?

Mr. JENNER. We give you our best judgment. They are former Governor John Connally and John Mitchell, the Attorney General.

Mr. SEIBERLING. And Paul?

Mr. JENNER. That is Paul McCracken, Chairman of the Council of Economic Advisers.

Mr. SMITH. Mr. Jenner, is that your best judgment, or do you know that that is Paul McCracken?

Mr. JENNER. That is our judgment from reviewing all the documents. We do not have and cannot represent to the committee that we have hard or eye-ball evidence to that effect. And it could be John Ehrlichman rather than John Mitchell.

Mr. SEIBERLING. You know that it was not Paul Sarbanes?

Mr. JENNER. I beg your pardon.

Mr. SEIBERLING. We know that it was not Paul Sarbanes.

Mr. JENNER. Tab. 20.

Mr. GEKAS. On April 28, 1971, Ehrlichman wrote a memorandum to the President criticizing Mr. McLaren for failure to follow the

administration's antitrust policy then under study by a Domestic Council Task Force and recommending action to be taken. The President approved Ehrlichman's recommendation.

Mr. JENNER. Now, this indicates to you that there was a high level administrative review on antitrust policy going on at this particular time. Paragraph 21.

Mr. GEKAS. On April 29, 1971, Rohatyn, accompanied by four ITT representatives met with Kleindienst, McLaren and Antitrust Division and Treasury Department staff members. The ITT represented ITT's position that there would be adverse economic and financial consequences if the divestiture of Hartford were required. Following the meeting, McLaren caused these arguments to be submitted to the Treasury Department and to Richard Ramsden, an independent financial consultant who had previously rendered advice to the Antitrust Division.

Mr. JENNER. Now, it should be noted that Mr. Mitchell on this day met with Mr. Rohatyn, both before and after the meeting with Mr. McLaren. However, Mr. Mitchell's meeting with Mr. Rohatyn apparently concerned brokerage house problems and other matters of that character. Mr. Rohatyn was a financial advisor. He was a partner in Lazard and Freres, New York investment firm, and a director of ITT. Both Mr. Rohatyn and Mr. Mitchell testified later on that they did not discuss ITT litigation, and that discussion by Mr. Rohatyn was confined to the conference with Mr. McLaren.

I direct your attention to tab 21.5. It is Mr. Rohatyn's letter to Mr. McLaren, a followup letter respecting the meeting and it gives his report of what was discussed in that meeting. The indistinct handwriting note in the left-hand margin is of no significance. We have interpreted it. What it reads is, "30 million is cap gain 1969." Then there is a blank "was 41 million." I thought you might be curious about it, and we wanted to assuage your curiosity. Paragraph 22.

Before it is read, we now reach the Republican convention site and the San Diego matters commencing with paragraph 22. All right, paragraph 22.

Mr. GEKAS. In April 1971, Mitchell, Haldeman, Lawrence Higby, Gordon Strachan, William Timmons, Jeb Magruder, and Robert Odle participated in the initial planning of the 1972 Republican National Convention and began to consider San Diego as a possible site. A memorandum from Higby to Strachan, dated April 29, 1971, says that Haldeman had discussed the possibility of a San Diego convention with California's Lieutenant Governor, Ed Reinecke. The memorandum states that Reinecke would, as a result of his discussion with Haldeman, cause a proposal for San Diego to be the convention site to be made to the Republican National Committee.

Mr. JENNER. Paragraph or tab 22.1 is a White House memorandum from Mr. Timmons to Mr. Haldeman which is of interest and pertinent, indicating the White House staff itself, members of it, being involved in the Republican National Committee, San Diego site.

Now, the handwriting on the exhibit—well, I might read an item first. Dick Capen, that is Richard G. Capen, Jr., the Assistant Secretary of Defense for Legislative Affairs in 1971, in the memorandum to which we call your attention at tab 22.1, in this 22.1, states that he

was to leave that position on May 1, 1972. "Dick Capen will not be able to go with me to San Diego for a look-see at that city as a possible convention site until May 1." That is Mr. Timmons speaking to Mr. Haldeman. "He is closing out his work at Defense, packing up, et cetera. He reports to San Diego on the 1st anyway and asks if that is too late." And you will notice some handwriting there. That reads "H. check Mitchell." We interpret that to mean that Mr. Haldeman is to or did check with Mr. Mitchell as to whether it was too late.

"What do you think?"

"Also, I would like a short session with you" there Timmons is asking Mr. Haldeman "about this mission. Is it undercover work at this point?" And you will notice that there is a drop down and the word "Yes" appears in handwriting. That is Mr. Haldeman's note stating affirmatively that it is undercover work at this point.

"Who pays for this trip?" And you can see the handwritten note "Gordon get funds"—that last word is difficult to read, but it is, f-u-n-d-s, and not something else.

"Should I solicit information from the RNC?" Mr Haldeman's note written below that is "No."

On the materials at the bottom, that is G and an arrow in two places, that is Gordon Strachan and indicates his direction to Mr. Timmons as stated.

Tab 22.5 is a memorandum from Mr. Higby to Mr. Strachan and reflects to involvement of Governor Reinecke, Lt. Gov. Ed Reinecke, and his aide, Gillenwaters, in the selection of San Diego as a possible Republican National Convention site. We have not ever been able to identify the memo that is mentioned in the first line of that letter. It might be well if I read the whole letter to you. It is short.

With regard to the attached memo on the 1972 GOP convention site—Haldeman raised this subject the other day in a meeting with Ed Reinecke, Lieutenant Governor of California, and Gillenwaters of his office. As a result of that meeting, Gillenwaters is going to cause a proposal to be made to the RNC.

That is the Republican National Committee.

Timmons should get in touch directly with Gillenwaters and see exactly what is happening here, and then let you know. In either case, there is probably not a need now for an immediate trip as a result of this Haldeman meeting.

I should say, Mr. Chairman, and ladies and gentlemen, that these documents are background materials. They are involved later on with respect to the sensitive political documents, and we received these documents from the White House. It is background material as to the convention site, the circumstances under which the convention site was arranged. As of course you know, it eventually aborted and Miami became the convention site. The documents were given to the Special Prosecutor, and after he had them, they were furnished to us by the White House.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Jenner, I wanted to ask you a question about 22.1 and the reference to "Gordon fund." Have we followed that through in any respect to find out whether or not there is a reference to whether this refers to some secret cash fund, or whether this refers to other campaign funds, or what that reference means?

Mr. JENNER. The reference to undercover work?

Ms. HOLTZMAN. No, "Gordon get funds."

Mr. JENNER. We must frankly state to you, Ms. Holtzman, that we are not clear and not being clear, we determined that we should not make any kind of supposition about it, other than to make clear that that word is funds.

Tab 22.7, please. Tab 22.7 reflects the detailed analysis of San Diego by the White House staff itself. It also reflects that the White House was attempting to keep its activities hidden from the personnel of the Republican National Committee. And in that connection, I direct your attention to page 4 of that memorandum. The top reads:

At the present time, Jo Good and the site selection people are not aware of our activities with respect to San Diego, although they are aware that "White House aides" have visited this city. But it seems to me that Bob Finch has been in touch with San Diego as well and has had Al Harutunian of San Diego tentatively reserve the convention hall for mid-September, allegedly for a Billy Graham Crusade. Jo Good has telephoned Gordon Luce of California of the Republican Party in this connection, but Luce has not told her of the Timmons visit.

It appears from these documents that Mr. Timmons did go to San Diego.

Thus it appears that if Jo Good has knowledge of a visit by "White House aides", this would refer to the Finch-Harutunian activities rather than Bill Timmons' visit.

Tab 22.8, the attachments mentioned in the memorandum, which appears under 22.8 were not furnished to the impeachment inquiry staff when we received these documents from the White House, so in that first sentence where it says, "Attached are the two reports from Justice," we did not receive them.

The middle paragraph, however, it says "Also attached is a section of a memorandum I prepared for Jeb's," and that is Mr. Magruder, "meeting with the Attorney General, which deals with the convention." That, of course, reflects Mr. Mitchell's involvement in the political matter of the convention site selection.

Tab 22.9 is a letter from Lt. Gov. Ed Reinecke to Mr. Timmons, Assistant to the President for Congressional Affairs, dated June 2, 1972. You will notice in the second full paragraph, Mr. Reinecke states:

I had the opportunity to visit with Bob Dole and Attorney General Mitchell by phone prior to leaving for California.

Both Mr. Mitchell and Mr. Reinecke subsequently denied talking about the convention with each other that early in the year. As you will recall, Mr. Reinecke said that he thought that the conversation occurred in September rather than in June, June 2, 1972. Tab 22.13.

Here again is a White House memorandum on this subject matter from Gordon Strachan to Mr. Haldeman regarding the 1972 convention site. In that memo, Mr. Strachan cites in three short paragraphs:

Magruder delivered the 1972 convention site decision paper to the Attorney General today. Your copy is attached.

As you know, Magruder and Timmons have developed a scenario that the Attorney General told you on June 23 he would slow down until the President has had an opportunity to give serious thought to San Diego.

The decision paper offers the facts for the President's consideration and recommends that San Diego be selected as the site for a 3-day convention beginning August 21, 1972.

In fairness, it should be noted that the decision memo does not mention the ITT pledge or the ITT antitrust cases and none of the documents to this moment have mentioned either of those subject matters. Paragraph 23.

Mr. DOAR. Members of the committee, I would like to call your attention to this particular paragraph for its pertinence to the matters involved in the Watergate presentation. You will remember that the role of Mr. Haldeman, the relationship of Mr. Haldeman, to Mr. Strachan and Mr. Higby were discussed and covered at length in the Watergate presentation. These memorandums are pertinent on the question of who was in charge and what role Strachan and Higby played with respect to their relationship with the President's Chief of Staff, Mr. Haldeman.

Mr. DENNIS. Mr. Chairman, what memorandums are we talking about?

Mr. DOAR. We are talking about the entire memos and the whole paragraph, but particularly, Mr. Dennis, if you will look at memorandum 22.2. This is a memorandum from Mr. Strachan to Mr. Haldeman. You see that there is a second page of that. There is in Mr. Haldeman's writing "wait a bit", in reaction to a memorandum of his decision with respect to a matter that his special assistant, Gordon Strachan, raises with him.

You will notice on the next page on a document, "Citizens for Re-election of the President", you will notice that at the end of that, there is a note, lined copy, "Mr. Gordon Strachan", with the paren, "For Mr. Haldeman's approval and concurrence if necessary."

Early on in the memos, there is a memo between Gordon Strachan—between Strachan and Higby, in which Mr. Higby is communicating a decision of Mr. Haldeman to Mr. Strachan. "Mr. Gordon C. Strachan (For Mr. Haldeman's approval and concurrence if necessary)."

Mr. DENNIS. I do not quite follow the significance of what you are talking about.

Mr. DOAR. The significance, number one, is with respect to the operation of CRP during the period prior to and following the Watergate break-in and during the time of the 1972 political campaign. There are pertinent materials that indicate that Mr. Haldeman, that the decisions were going up at least to Mr. Haldeman for decision and they were not being made by the Committee to Reelect the President.

The second thing indicates that Mr. Strachan and Mr. Higby were not decisionmakers, but they were, in effect, runners or implementers of decisions that Mr. Haldeman made and that neither Strachan nor Higby had the kind of authority to make substantive or substantial decisions within the procedures and system and chain of command that President Nixon had set up and established for the White House operation.

Mr. DENNIS. Well, I would have assumed that to be true, and they were working for Haldeman. Where do we go from there for our purposes?

Mr. DOAR. Well, there are questions, for example, of who authorized the transfer of the \$350,000 from Mr. Haldeman to Mr. LaRue to pay to the defendants in the Watergate case. There is evidence that Mr. Strachan was the man who delivered the money. I think that the infer-

ence is permissible the direction to do that came at least from Mr. Haldeman.

Mr. SEIBERLING. Do not we have direct testimony to that effect already?

Mr. DOAR. We do have testimony to that effect, but this corroborates that testimony. We do not have the testimony from Mr. Haldeman.

Mr. DENNIS. Of course, this is an entirely different matter.

The CHAIRMAN. Why don't we proceed?

Mr. JENNER. Thank you, Mr. Chairman. Paragraph 23.

Mr. GEKAS. In a memorandum dated May 5, 1971, Ehrlichman informed Mitchell that he desired to meet with McLaren about the ITT cases to achieve the agreed-upon ends discussed by the President and Mitchell.

Mr. JENNER. The annotation is the memorandum from Mr. Ehrlichman to Mr. Mitchell, which we received from the White House, dated May 5, 1971. Paragraph 24.

Mr. GEKAS. On May 12, 1971, ITT President Geneen discussed with Congressman Bob Wilson, whose district included part of San Diego, the possibility of ITT financial support for a San Diego convention bid.

Mr. JENNER. This is also background material respecting, as we will point out to you soon, the inquiries of the Senate Judiciary Committee in the Kleindienst confirmation proceedings with respect to this material. Paragraph 25.

Mr. GEKAS. On May 17, 1971, the government's appeal in *ITT-Grinnell* was perfected by the filing of a jurisdictional statement.

Mr. JENNER. That fixes the date for you. And the supporting material is direct evidence of it. Paragraph 26.

Mr. GEKAS. By report dated May 17, 1971, Richard Ramsden reported his findings on the ITT position with respect to the financial ramifications of divestiture of Hartford.

Mr. JENNER. You will recall that Mr. Ramsden is the independent financial consultant that the Department of Justice had used in prior matters. During the Kleindienst hearings, confirmation hearings, the Senate Judiciary Committee, as I say, dealt at great length with the involvement of Peter Flanigan, a special assistant to the President for economic affairs in the matter of the hiring of Richard Ramsden to analyze the ITT position. After the ITT May 17, 1971, economic presentation made by Mr. Ramsden, Mr. McLaren asked Flanigan to contact Mr. Ramsden and ask him to analyze the arguments. Flanigan did so and Ramsden made an independent study and Flanigan transmitted the report through Mr. Kleindienst to Mr. McLaren.

Apparently, the esteemed Senators of the Senate Judiciary Committee felt that Mr. Flanigan was the author of the idea of retaining Mr. Ramsden and spent a great deal of time on it. Our investigation convinces us that Mr. Flanigan had nothing to do with policy decisions with regard to retaining Mr. Ramsden.

Inasmuch as when you do glance through those Senate hearings, you will see a lot of testimony on the subject, it occurred to us that we might advise you that it turned out, after all of the questioning, that there was no merit to the line of questioning in any event.

Now, I think that is all we need on that. Paragraph 27.

Mr. GEKAS. On June 17, 1972, McLaren recommended to Kleindienst that the ITT suits be settled. His proposed settlement included the requirement that ITT divest itself of Grinnell, Canteen, and certain other ITT subsidiaries, but permitted ITT to retain Hartford Fire Insurance Co. The basic terms of the settlement offer were put to ITT on a take-it-or-leave-it basis and were accepted. Details of the settlement were then negotiated among ITT and Antitrust Division lawyers.

Mr. JENNER. Shortly after this, on July 9, 1971, the U.S. District Court of Chicago, Northern District of Illinois, entered judgment in the *Canteen* case in favor of Canteen, the then merged division of ITT, and dismissed the Government's complaint on its merits. This occurred in the midst of the negotiations between ITT counsel and the Antitrust Division staff. Paragraph 28.

Mr. GEKAS. San Diego's convention bid was authorized by the San Diego City Council on June 29, 1971, on July 21, 1971, ITT-Sheraton's president, Howard James, confirmed by telegram his company's commitment to the San Diego convention and tourist bureau of \$100,000 for convention-related expenses plus an additional \$100,000 if and when \$100,000 was raised by the bureau from other nonpublic sources. The pledge was subject to the condition that the Sheraton Harbor Island Hotel, then under construction, be used as Presidential convention headquarters. The decision for San Diego to be the convention site was made within the administration and transmitted to the Republican National Committee. On July 23, 1971, the Republican National Committee selected San Diego as the 1972 convention site.

Mr. JENNER. We have a couple of tabs here. If you will turn, please, to 28.2 this reflects Mr. Mitchell's continued involvement in the selection of San Diego as the convention site.

Tab 28.5 is a memorandum to the President from Mr. Klein on White House stationery, received from the White House by us. There is mention there of a meeting by the President with Mr. Dole and the fact is that that meeting did take place, which you will find in tab 28.6.

Mr. Gekas called my attention to the fact that I missed a tab because the alerting thing was at the top instead of the side. So if you will turn, please, to tab 28.3, a memorandum from Mr. Klein to Mr. Haldeman. You may wonder why there are a number of copies of this document included under tab 28.3. That is that in order to demonstrate to you that copies were in fact received by Mr. Magruder and Mr. Timmons and the Attorney General—we do not have the Attorney General, sorry.

The third paragraph of that memorandum, however, says "This includes"—that is, the financial package for San Diego, which was to be between 1 million 3 and 1 million 4 in goods, services, and cash. The memorandum recites:

"This includes \$600,000 in these three categories in the City of San Diego." That is a colon rather than a semicolon there. "\$400,000 in private money arranged through a new major ITT hotel and contacted by Bob Wilson"—that is Congressman Wilson—"about \$100,000 from the Convention Tourist Bureau; \$100,000 from the community and possibly \$100,000 from the county. The latter three figures could be a little more or a little less."

So you will notice reference to \$400,000 in private money arranged through a new major ITT hotel and contacted by Congressman Wilson. As we drew your attention to the later tab, that turned out to be \$100,000 in excess plus \$100,000 in addition conditioned upon the raising of \$200,000 from other sources.

Tab 28.8 is a memorandum from Mr. Magruder to Attorney General Mitchell. This memorandum specifically mentions ITT's problems with the Justice Department and the plan to use the new ITT hotel as the Presidential headquarters.

I direct your attention to page 3 of that memorandum, which follows Mr. Magruder's memo.

This is tab 28.8. I direct you to the fourth page of the pages under paragraph 28.8. That memorandum was a means by which approval was sought with regard to the convention site and there were checkmarks, you will notice, in the approval form, on that page and on the pages that follow to be checked off by those to whom the memorandum was sent.

Paragraph 4, which occurs on page 3, reads:

Include as part of the understanding in San Diego's bid for the convention was an agreement that the new Sheraton Hotel Harbor Island, owned by ITT, be the headquarters hotel. John had suggested that the problems which ITT may or may not be having with the Justice Department would pose a problem here, but I cannot see any conflict of interest situation at all. It was initially uncertain whether this understanding meant headquarters for the Republican National Committee or for the President, but Bob Wilson and Leon Parma are now anxious that it be the headquarters hotel for the President's campaign. While they understand that the President will probably never set foot in the hotel, they very much want the campaign committee and some of the White House staff to be headquartered at the Sheraton. We agree that the headquarters should be at this hotel for a number of reasons: It is brand new, 10 minutes from the convention hall, 2 minutes from the airport—

I have made that trip and that is a little optimistic—

Six minutes to downtown, self-contained on an island and therefore more secure than any hotel in the area, and has 600 deluxe rooms, of which 400 are in a high-rise unit. Even if the city fathers did not want this to be the headquarters hotel, Timmons feels that it is undoubtedly the best hotel in the city and should definitely be the headquarters. Therefore, we recommend that we allow Bill to communicate to the San Diego people the choice of this hotel as our campaign committee headquarters.

And you will notice the checkmarks on the following page. Paragraph 29.

Mr. GEKAS. On July 21, 1971, after ITT and antitrust division lawyers had negotiated details of the settlement of the ITT litigation, the settlement was announced.

Mr. JENNER. The tab under this item. Mr. McLaren's testimony, Mr. Rohatyn's testimony, and Mr. Klein's testimony. We do not wish to direct your attention to any particular item of those annotations, except to call your attention to the source. Paragraph 30.

Mr. GEKAS. A Sheraton Harbor Island Corporation check for \$100,000 dated August 5, 1971, and representing the noncontingent portion of ITT's pledge was delivered to the San Diego convention and tourist bureau.

Mr. JENNER. And the annotation is a photograph of the face of that check. Paragraph 31.

I should say before Mr. Gekas reads 31 that I have mentioned several times the general background or foundation and that background has been built and we now proceed to Mr. Kleindienst's confirmation proceedings.

Mr. GEKAS. On February 15, 1972, the President nominated Richard G. Kleindienst to be Attorney General to succeed John Mitchell, who was leaving the Department and who later became campaign director of the Committee for the Reelection of the President. The Senate Committee on the Judiciary held hearings on the nomination and recommended on February 24, 1972, that the nomination be confirmed.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTI. Before we leave this matter of the San Diego convention and visitors bureau, I would like to ask whether or not this is an agency of the city government?

Mr. JENNER. Yes, it is, sir.

Mr. LATTI. Thank you.

Mr. GEKAS. Paragraph 32, on February 22, 1972, Columnist Jack Anderson obtained from an ITT source a memorandum dated June 25, 1971, purportedly written by ITT lobbyist Dita Beard addressed to ITT Vice President Merriam regarding the ITT-Sheraton convention pledge and settlement of the ITT antitrust cases. Anderson's investigative reporters contacted first Dita Beard to discuss and confirm the memorandum's validity and then ITT and administration officials to discuss and attempt to confirm the events reported in the memorandum. On February 24, 1972, ITT personnel destroyed documents in the Washington office files.

Mr. JENNER. This paragraph is really the catalyst that brought about Mr. Kleindienst's request for resumption of the hearings with respect to his confirmation. You will notice in the first of the annotations, 32.1, I am reading from the face page, that is, paragraph 32 page, we used the word "purported" memorandum from Dita Beard to William Merriam. This was received from the White House. We do that because there are denials by Dita Beard that she wrote the memorandum, there are other denials. There were some experts brought in to examine the memorandum and they rendered a somewhat inconclusive report, but at least a report that had a thrust that they had doubt about the genuineness of the memorandum. Paragraph 33.

Mr. GEKAS. In a February 28, 1972, Department of Justice press release, Mitchell said he had met Dita Beard only once, at a party given by Gov. Louis Nunn of Kentucky, May 1971. Mitchell denied allegations that he had discussed the ITT antitrust cases with her. He also denied in the press release that he had discussed the ITT matter with the President.

Mr. JENNER. Turn, if you will, to tab 33.1. Before directing your attention further to it, President Nixon returned on the evening of February 18 from his China trip. The last paragraph of the memorandum reads:

With respect to allegations that the President discussed the matter with me, there would be no occasion for him to do so and he did not.

Next paragraph.

Mr. GEKAS. Paragraph 34, on February 29, March 1, and March 3,

1972, there were published three columns by Jack Anderson based in part on the Beard memorandum. The articles alleged a connection between the ITT-Sheraton pledge and the ITT antitrust settlement and purported to involve both Mitchell and Kleindienst. As a result of the publication of the first two articles, Kleindienst asked that his confirmation hearings be reopened.

Mr. JENNER. Paragraph 25.

Mr. GEKAS. On March 1, 1972, during his final press conference as Attorney General, Mitchell again denied talking to the President about ITT or any other antitrust case.

Mr. JENNER. Under tab 35.1, which is Mr. Mitchell's press release—no, press conference, released by the Office of the White House Press Secretary, there were a series of questions asked.

What can you tell us about Jack Anderson's charges on ITT?

Attorney General MITCHELL. This is a political question, because the only one that I know that is raising it is Larry O'Brien. As far as I know, I can tell you and repeat again the statement that I put out the other day when the subject matter came up.

My former law firm had represented some of the ITT subsidiaries and so in accordance with the practice in the Justice Department, we file all of these matters, not only the Attorney General, but all the other lawyers who come in. And so when the Justice Department pursued some of its courses against ITT back in 1969, I rescued (sic) myself and had nothing to do with the subject matter since that time.

At the top of the next page, he was asked the question—no, he is continuing. He said:

The Anderson column that I read made reference to the fact that I had talked to President Nixon about it. I have not talked to President Nixon about ITT or any other antitrust case, for that matter.

Does that cover all of it or is there anything else involved that I might have left out?

I should say before that is read, we now begin to reach the matter of the politically sensitive documents and other documents that the SEC was receiving and that the Staggers committee sought. Paragraph 36.

Mr. GEKAS. On or about March 1, 1972, a member of the staff of the SEC demanded that ITT produce documents in the files of ITT's Washington, D.C., office. The SEC staff member contended that production of the documents was called for by subpoenas previously issued in connection with SEC proceedings. Attorneys for ITT collected documents believed to be included in the SEC demand.

Mr. JENNER. Turning to the only tab under this paragraph, 36.1, Michael Mitchell—that is an affidavit of Michael Mitchell. Michael Mitchell was an attorney for ITT, a New York lawyer who was representing ITT in the proceedings before the SEC—that is, he and his partners. I think it was helpful to you to read at some length the document, because it does give the story in some sequence. This is Mr. Mitchell's affidavit. Paragraph 3.

On or about February 29, 1972, an article by Jack Anderson was published which concerned a memorandum dated June 25, 1971, alleged to have been written by an ITT employee, Dita Beard. I am informed and, based upon such

information, believe that on or about March 1, 1972, Stanley Sporkin, then Deputy Director of Enforcement of the SEC, telephoned Joseph H. Flom, also a member of SkaddenArps—

A-r-p-s—That is Mr. Mitchell's, the affiant's law firm, not the Attorney General.

And that Sporkin stated that the memorandum referred to in the Anderson article had not been produced pursuant to two subpoenas which the SEC had issued in connection with its investigation and that he wanted to know the facts concerning this. Flom indicated that he was trying to find out that and that a search was going to be made promptly of ITT's Washington, D.C., office to determine the facts. Accordingly, the next day—March 2, 1972—two lawyers employed by Skadden, Arps began a review of files in the Washington, D.C. office of ITT.

4. On March 2, 1972, Flom and I attended the opening session of the resumed hearings of the Senate Judiciary Committee on the nomination of Richard G. Kleindienst to be Attorney General. The hearings were being held to investigate the subject of the settlement of certain antitrust suits brought by the U.S. Department of Justice against ITT; this general subject was also then under review by the SEC in connection with its investigation of alleged "insider trading" by certain ITT officials.

5. On March 2, 1972, the lawyers reviewing ITT's Washington Office files found several documents which they believed were possibly included within the SEC subpoenas and reported this to Flom and me upon our return to the office after the conclusion of the hearings that day. These documents referred to the government's antitrust lawsuits against ITT and also to contacts between ITT officials and administration officials in 1970 and 1971. Flom concluded, after discussions with Edward J. Gerrity, Jr., a senior vice president of ITT's—

Whom we heretofore identified for you—

That it would be wise and proper to apprise counsel for government witnesses, including Kleindienst, of the existence of the documents since testimony in the Senate Judiciary hearings related—and could be expected to relate—in part to such contacts.

6. Pursuant to the instructions of Flom, on that evening—March 2, 1972—I returned to my room at the Sheraton-Carlton Hotel in Washington in order to meet with one Wallace H. Johnson. I think, but am not certain, that arrangements for this meeting were initiated by Gerrity.

And that is true.

7. To the best of my recollection, it was during that evening, March 2, 1972, I met with Johnson in my room in the Sheraton-Carlton Hotel. I initially assumed that Johnson was employed by the Department of Justice.

Parenthetically, he had been.

However, during the course of our meeting, he stated that, while he had formerly worked for the Justice Department, he was currently employed by the White House and was acting in some sort of liaison role to the Justice Department in connection with the Judiciary Committee hearings. I then turned over certain documents which referred to the antitrust suits and ITT and administration contacts. Based upon my present recollection, I believe I gave him copies of all the documents annexed hereto, of which I was then aware, with the possible exception of exhibit B, which did not mention Kleindienst and the information in which was to an extent referred to in other documents which I gave to Johnson.

8. Early in the week of March 6, 1972, I don't recall the precise date or the place—

And we have an exhibit to establish that date—

I turned exhibit B over to Johnson and perhaps one or two other documents mentioning the antitrust suits and contacts between ITT and administration officials which had subsequently been discovered in ITT's Washington office files. Attached hereto as exhibits A and B are the texts of the documents

which, to the best of my information and belief, were given to Johnson on these occasions—the ITT documents.

Down to paragraph 10, please.

As a result of further conversations with the SEC, the portions of the ITT documents dated during 1971 and relating to that phase of the SEC investigations involving the 1971 antitrust suit settlement and alleged “insider” trading in connection therewith, among other documents, were delivered to the SEC on March 21, 1972, and, to the best of my recollection, the portions of the ITT documents dated during 1970 and relating to that phase of the SEC investigation involving the 1970 ITT-Hartford Fire Insurance Company affiliation, among other documents, were delivered to the SEC on April 14, 1972. I should note that during this period further reviews of the ITT Washington office were made for other documents which might have some relevance to the SEC investigation and that such documents as were found were also turned over to the SEC on these dates.

Following that affidavit are the exhibits to which reference is made by Mr. Mitchell in his affidavit which you will want to pursue at your leisure. Book II.

The CHAIRMAN. Let us take a 10-minute break.

[Recess.]

Mr. JENNER. Thank you, Mr. Chairman.

This morning the gentleman from New York, Congressman Fish, asked if we had testimony—oh, he has left. Well, I will call this to his private attention.

We did say to the committee this morning that the memoranda back and forth between Mr. McLaren or Judge McLaren and the Solicitor General’s Office we have received under an agreement of confidentiality. And the confidentiality is this: The Solicitor General and the Attorney General’s office is apprehensive that if those documents, that exchange between Mr. McLaren and Mr. Griswold should be published, that lawyers throughout the country would be using that exchange of correspondence against the Department of Justice in other antitrust cases in the future, and we felt that that was a legitimate request on the part of the Solicitor General that they not be made public for that purpose.

Oh, Congressman Fish, you are here, sir. You asked this morning if we had any testimony with respect to the exchange between Solicitor General Griswold and Mr. McLaren with respect to the at least temporary reluctance on the part of the Solicitor General to undertake to file the jurisdictional statement. We do have testimony, and that is in the hearings before the Senate Judiciary Committee, which you will find at part 2, page 372, in which Senator Hruska says:

Your authorization of the appeal of that case was characterized by one of our witnesses here, Mr. McLaren, as being somewhat reluctant. Is that a fair statement?

And Mr. Griswold responds—

Senator, there was grave doubt in my office by members of my staff and by myself about the *Grinnell* case. We felt it would be very difficult to win it, not only because the law with respect to conglomerate mergers is far from clear, but also because in this particular case there has been sharp conflict in the evidence before the District Judge. And the District Judge had found all of the facts against us, and all experience shows that it is extremely difficult to win an anti-trust case or another type of case in the Supreme Court when you have to attack the findings of fact.

Mr. FISH. Thank you very much.

Mr. COHEN. Mr. Jenner, would you just explain the chronology for me dealing with Mr. McLaren and when he became Judge McLaren? As I recall, there was a statement by the President saying no judgeship for him, and would you tell me when that took place?

Mr. JENNER. He was nominated by the President and confirmed, as I recall—let me see, he was nominated on December 2, 1972, and confirmed the same day.

Mr. Gekas has committed his first error. It was 1971, rather than 1972, and he very rarely commits errors, unlike me.

Paragraph 37. We are going to attempt to finish this book in a half an hour or not more than 45 minutes.

The CHAIRMAN. Thank you.

Mr. GEKAS. Paragraph 37, on Thursday, March 2, 1972, pursuant to Kleindienst request, the confirmation hearings resumed and Kleindienst testifying under oath denied talking other than casually to the White House and White House staff about the ITT matter. He denied receiving any suggestions from the White House as to the action that the Justice Department should take in the ITT cases.

Mr. JENNER. In view of the time pressure, we will not read, but we will call your attention to 37.1, which is the testimony of Mr. Kleindienst at the resumed hearings. at his request, you will notice, and printed page 95, he states that he did request the resumed hearings, and then he states at the top of page 96 the reason why he asked for the hearing, and makes the statement that is set forth in the information paragraph that Mr. Gekas has read. The particular false testimony you will find bracketed at the top of printed numbered page 157, in which he makes no reference whatsoever to the telephone conversation with President Nixon. Paragraph 38.

Mr. GEKAS. On the same day, an ITT attorney delivered copies of one or more of the documents collected by ITT attorneys from ITT's Washington office files to White House Aide Wallace H. Johnson. The document or documents were then conveyed by Johnson to John Mitchell. During the following week, copies of other documents taken from the ITT Washington office, which mentioned the ITT antitrust suits and contacts between ITT and administration officials were delivered by ITT attorneys to Johnson.

Mr. JENNER. You will notice in the annotation that then we have Mr. Mitchell's affidavit with attachments, Mr. Wallace Johnson's affidavit and John Mitchell's log, all of which directly support the statements made in paragraph 38. And you will recall that Wallace Johnson was an Associate Deputy Attorney General for Legislation in the Department of Justice from July 1970 to January 1972; and a Special Assistant to the President for Legislative Affairs from January 1972 to April 1973; and Assistant Attorney General for Lands and Natural Resources Division from April 1973 to the present. Paragraph 39.

Mr. GEKAS. On the evening of March 2, 1972, Dita Beard, having spent 2 days at the ITT offices in New York City, left Washington by airplane for Denver, Colo., enroute to West Yellowstone, Mont. During the flight she became ill, and on the evening of March 3, 1972, was admitted to a Denver hospital.

Mr. JENNER. The annotations, particularly 39.3 and 39.4 are corroborating proof of her trip and the United Airlines passenger ticket and the United Airline's stewardess report with respect to the passenger illness of Mrs. Beard on the flight to Denver.

Now, Robert Mardian testified before the Senate select committee that G. Gordon Liddy told him that the Watergate burglary group was responsible for getting Mrs. Dita Beard out of Washington at the time she was likely to be called before the Senate Judiciary Committee in connection with the reopened Kleindienst hearings. Mitchell testified that Robert Mardian and LaRue informed him that Liddy had told them of his, Liddy's, involvement in the removal of Dita Beard from Washington. Mitchell characterized the removal of Beard as one of the "White House horrors." You will find that at volume 4, SSC proceedings, pages 1622 and 1644.

Now, we have not included that in this because Mr. Doar and I have both regarded this as single and triple hearsay and we have not been able to get what we thought was sufficient reasonably hard evidence to include the matter as a tab under this paragraph. Next paragraph, 40.

Mr. GEKAS. Paragraph 40, on Friday, March 3, 1972, Kleindienst, in his testimony before the Senate Committee on the Judiciary, denied consulting with, reporting to, or getting directions from anybody at the White House about the ITT antitrust cases. He also testified that he did not recall why, on April 19, 1971, the Department of Justice requested a delay in the appeal of the *ITT-Grinnell* case to the Supreme Court.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, although we are very conscious of the time pressure, in this area we feel we must call your attention specifically to some of the testimony, and first I wish to direct your attention to tab 40.1, the testimony of Mr. Kleindienst before the Senate Judiciary Committee, printed page No. 191. Senator Bayh asks the question:

Now, I ask you one other question. I wonder if you have had a chance to reflect overnight on whether you had ever talked to anyone down at the White House about the *ITT* case, and it would be—

and Mr. Kleindienst interrupts:

No, sir. No, sir. To the best of my recollection, but as I qualified that yesterday, I am talking to somebody at the White House almost constantly about a variety of problems, and it is not inconceivable that somebody up there could have made reference to the status of the *ITT* cases, you know, or something like that.

So far as consulting about, reporting, getting directions from, going into depth on these matters, or any other antitrust case, I have never had that experience.

Mr. McCLORY. Could I ask a question? Was that before or after Special Prosecutor Cox told Bayh about his private conversation with the former Attorney General Kleindienst?

Mr. JENNER. A year and one-half before. The incident to which you refer was 1½ years later.

Mr. McCLORY. Cox spoke, did he not speak to Bayh, or he spoke to Kennedy and Hart and three or four others and told them—

Mr. JENNER. Kennedy.

Mr. McCLORY. Kennedy, yes, and several others, and told them

what Kleindienst had told him in secret and I just want to know whether or not Archibald Cox related that information at a later time.

Mr. JENNER. It was necessarily——

Mr. McCLORY. A much later time?

Mr. JENNER. Necessarily, at a much later time.

Mr. McCLORY. So, Bayh did not have information, he could not have information from any private, secret source at that time?

Mr. JENNER. That is true, sir.

Mr. OWENS. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. As a point as to the knowledge of the President concerning this testimony at this time, because that would be significant as to his knowledge that Kleindienst was saying that there was no conversation, do you have any check as to his knowledge of press accounts, or what press summary he had, so that the President, in fact, was aware of this testimony given by Mr. Kleindienst? Do we have any kind of information on this, Mr. Jenner?

Mr. JENNER. Well, we might, Mr. Chairman, in view of that question, we might turn to paragraph 52.

The CHAIRMAN. In other words, we are coming to that point?

Mr. MEZVINSKY. OK.

Mr. JENNER. We are coming to it.

Mr. MEZVINSKY. Fine.

Mr. JENNER. We were at page 203, printed page 203, which is the next page and Senator Kennedy asks a question.

Now, if I understand on April 19 the Justice Department requested a last minute delay for its filing of an appeal in *Grinnell*. This is the *ITT* case in the Supreme Court, is that right, Mr. Kleindienst?

Mr. KLEINDIENST. I beg your pardon, Senator Kennedy?

Senator KENNEDY. That on April 19, this is the day after Mr. Rohatyn's phone call to you, the Justice Department requests a last minute delay for its filing of an appeal in *Grinnell*? Is that correct? I believe that——

And Mr. Kleindienst interrupts:

We requested a delay, but I do not remember the date, Senator Kennedy.

Now, if you turn to page 204, at the top of the page, Senator Kennedy asks a question.

As I understand, if we can get back now, we have the phone call of the 18th, the 19th is the request by the Department in the *Grinnell* case. Would you tell us, Mr. Kleindienst, why this request was filed since there had already been a 30-day extension in the *Grinnell* case?

Mr. KLEINDIENST. Well, there was just a problem as to whether this thing was to be filed in the request for the delay. Excuse me just a minute.

And at this point, Mr. Kleindienst consulted with an aide. There was a short pause. And Mr. Kleindienst then says:

Senator Kennedy, I do not recollect why that extension was asked.

Senator KENNEDY. Well, does Mr. McLaren have to petition there?

Mr. McLAREN. I was just looking at the memorandum we filed, or the Solicitor General filed rather, as to the precise details as why we filed it at that time. I think that we said "additional time is needed for further study of the case and to permit consultation among various interested government agencies with regard to whether the government should perfect its appeal."

And you will recall that we read that to you.

Senator KENNEDY. What was the doubt, Mr. Kleindienst, as to whether the government should perfect its appeal?

Mr. KLEINDIENST. I do not know.

Paragraph 41.

Mr. GEKAS. On the afternoon of Sunday, March 5, 1972, the President and Haldeman returned to Washington, D.C. from Key Biscayne. On Monday, March 6, 1972, the President had a conversation with Haldeman, Ehrlichman, and Colson. At about 1:30 p.m., shortly after leaving the President's office, Ehrlichman met with SEC Chairman Casey.

Mr. JENNER. We have requested, in the chairman's letter of April 19, 1974, tapes of all of the conversations that are mentioned in this particular paragraph and, of course, we have not received them.

Now, Mr. Ehrlichman's meeting with Chairman Casey mentioned in this paragraph 41, probably concerned the SEC's demand to ITT to supply documents from ITT's Washington office. This is our conclusion on the basis of the materials we have read to you and presented to you this afternoon. Ehrlichman, who was contacted by ITT, according to Casey, wanted to know whether this demand was necessary. While Casey has testified to such a meeting, he was vague at what point in March 1972, it occurred. It could also have been a March 21 meeting between Mr. Ehrlichman and Mr. Casey, at which this discussion took place, although in view of the attention given to the Kleindienst hearings by the White House, it is possible that both meetings concerned the ITT documents.

Now, you will find that I have summarized tab 41.6 for you in this statement and I will not read 41.6 to you.

Now, Mr. Casey. Mr. Ehrlichman saw Mr. Casey shortly after Ehrlichman met with Haldeman and the President. After seeing Casey that afternoon, Ehrlichman met with Charles Colson and Wallace Johnson. He later met with John Mitchell before seeing the President at 5 o'clock that afternoon. All of these persons, except for Casey, were involved in monitoring the progress of the Kleindienst hearings.

Casey testified that at the meeting with Ehrlichman in March 1972, Ehrlichman asked him whether the SEC had to insist on receiving the additional documents demanded from ITT. And the annotation listed under paragraph 41, the paragraph which has been read, brings out both of the items to which I have now called your attention.

There is one thing that I would like to do. I want to call your attention to paragraph 41.3. And you will notice March 1 we begin to show you the sequence of dates taken from the President's log. We received these documents from the White House. And you will notice the sequence of events on March 1, 1972. But particularly the second page, the sequence of events on March 5 and especially on March 6, 1972. While we have asked for, but have not received the tapes with respect to the conversations, that are many conversations with the President listed as March 6, 1972, and this was the day before Mr. Kleindienst resumed his testimony before the Senate Committee on the Judiciary. Paragraph 42.

Mr. GEKAS. On Tuesday, March 7, 1972, in a prepared statement given under oath before the Senate Committee on the Judiciary, Kleindienst described the circumstances surrounding the request for

an extension of time to appeal *ITT-Grinnell*. He omitted mention of the President's order to drop the case made during their telephone conversation of April 19, 1971.

Mr. JENNER. I call your attention to, but will not read because of its length, tab 42.1, Mr. Kleindienst's testimony before the Senate Judiciary Committee the following day, at which he omits, when you read it, any reference to his conversation with President Nixon.

Mr. EDWARDS. Mr. Jenner, has he since that time ever referred to that conversation? It is difficult to imagine that he would have forgotten such an extraordinary conversation. Do we have any information on that later? I refer to the telephone conversation with the President.

Mr. JENNER. From all our information, he has never referred to it again.

Mr. EDWARDS. Has anybody asked him?

Mr. GEKAS. In late 1973, regarding the event that Congressman McClory was referring to, it is our understanding that Mr. Kleindienst approached the Special Prosecutor and informed him then of the events of 1971, specifically the way he testified about those events in the Senate committee.

Mr. JENNER. And one other thing, Congressman Edwards. Of course, Mr. Kleindienst pleaded guilty.

The CHAIRMAN. What did he plead guilty to?

Mr. JENNER. To failing fully to state the facts during the course of his testimony before—

Mr. OWENS. I think that is incorrect.

Mr. DOAR. If you will look at tab 58.1, the very last tab of the second book of information, paragraph 58.1, you will find Mr. Kleindienst did refuse to answer questions referring to the following communication in relation to antitrust cases involving ITT between the President of the United States, Richard M. Nixon, and members of the staff of said President and by the said Richard G. Kleindienst.

Mr. JENNER. Mr. Gekas reminds me that Mr. Kleindienst himself came forward to Special Prosecutor Cox and advised him. Paragraph 43.

Mr. GEKAS. On March 8, 1972, Kleindienst testified before the Senate Committee on the Judiciary and denied again that he was interfered with, or pressured, importuned, or directly by anybody at the White House in connection with the discharge of his responsibilities in the ITT cases.

Mr. JENNER. Here again is a single tab and the express testimony of Mr. Kleindienst. It appears on printed numbered page 352 under tab 43.1. In view of the time pressure, I will not read it, but it is as express and as exact as stated in the information paragraph. Paragraph 44.

Mr. GEKAS. In early March 1972, a White House task—

Mr. JENNER. Excuse me.

Mr. Doar thought we ought to call your attention to one sentence at least in Mr. Kleindienst's testimony. On second thought, I share that, instead of asking you, Mr. Chairman, to spend the time at it.

Well, I also know this, Senator Kennedy, as I have testified fully: in the discharge of my responsibilities as the Acting Attorney General in these cases, I was not interfered with by anybody at the White House, I was not importuned. I was not pressured. I was not directed.

Paragraph 44.

Mr. GEKAS. In early March 1972, a White House task force consisting of Ehrlichman, Colson, Moore, Dean, Fielding, Johnson, Assistant Attorney General Robert C. Mardian and others, was established to follow the Kleindienst hearings its activities continued throughout the month. Fielding was given the responsibility of reviewing White House files and collecting all documents to ITT, which he proceeded to do.

Mr. JENNER. This series of paragraphs is in response to your question, do we have proof that the White House staff was monitoring these Kleindienst hearings. Paragraph 45.

Mr. GEKAS. On March 14, 1972, John Mitchell appeared before the Senate Committee on the Judiciary and twice denied under oath that he talked to the President about the ITT antitrust litigation or any antitrust litigation. On the evening of March 14, 1972, the President and Mitchell had a telephone conversation which, according to Mitchell's logs, was their only telephone conversation during the month.

Mr. JENNER. Mr. Mitchell's log appears as 45.2 and his testimony appears under 45.1.

Before I direct your attention to that, the material reviewed concerning the site selection for the 1972 Republican National Convention has frequent references to conversations with Mr. Mitchell about San Diego. In fact, one memo about the selection of San Diego as the convention site was addressed to him. All of this material dated from April to July 1971.

Mr. Mitchell apparently gave at least mistaken testimony to the—I do not like to characterize it as false, but it was grossly mistaken—to the Senate Judiciary Committee, not only about his involvement in the ITT cases, but also about his involvement in the selection of San Diego as the 1972 Republican Convention site. The reason I do not like to characterize it, that is a decision for the committee to make and not for us to characterize.

We do not include Mitchell's testimony on the subjects about which the President would have had no knowledge.

Turning to Mr. Mitchell's testimony under tab 45.1 at numbered page and printed page 552. He is asked the question by Senator Hruska:

Did the President ever call you and say, "Lay off ITT"?

Mr. MITCHELL. Senator, the President has never talked to me about any anti-trust case that was in the Department. The only conversations I have ever had with the President was early in the administration when we did discuss before, not litigation, not pending cases, but policies, and the discussions took place with the Council of Economic Advisers and some of the other Cabinet officers as to what our policies should be, and the policies that have developed out of the antitrust decision of this administration came basically from the concepts developed at that meeting.

But specifically, with respect to ITT or any other litigation, no, I have never talked to the President about it.

Senator HRUSKA. So that if there is an effort to say that the President called you and told you to lay off ITT or in the alternative, "make a reasonable settlement, would you please," that I presume would fall in the same category or comment?

Mr. MITCHELL. It would, most assuredly would. I can't imagine that the President of the United States pleading with anybody for anything. If he was going to talk to them, he would tell them what to do.

Now, you will notice when we listened to the 6 minute segment of tape early this afternoon, I directed your attention to the very last line, utterance, on that tape, which was a reference to the *Network* case. There were two antitrust cases about which Mr. Mitchell had conversations with the President.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman, I would like to have my memory refreshed a little further on that tape. Was it not a fact that they were discussing policy before that in that conversation?

Mr. JENNER. Well, they were discussing policy, but also ITT and the networks.

Mr. LATTA. In connection with policy?

Mr. JENNER. Politics?

Mr. LATTA. No, policy. Let me, to save time, would you please give me a copy of the transcript so I can read it and refresh my memory? You can go ahead.

Mr. JENNER. All right.

Congressman Latta, pursuant to the rules of the committee, those transcripts were taken back—oh, are they still here? Good.

The reason I said "politics" is that Mr. Mitchell was talking to the President, as you will notice from reading that tape, about the politics of the situation with respect to ITT appeal and then the talking tailed off on to the *Network Antitrust* case.

Now, Mr. Mitchell's testimony before the Senate judiciary committee on March 14, 1972, to which we have just drawn your attention and read to you, the whole testimony was recorded or reported that evening on NBC news. The broadcast described Mitchell's testimony, including "I have never talked to the President about the ITT case."

The reason they were not included in the books is that we have just received those transcripts sometime during the morning.

Mr. Doar suggests, Congressman Latta, that I might call your attention to page 571 under tab 45.1. Down about half way, Senator Mathias asked the question in examining Mr. Mitchell:

And the second one, I think the only other reference in the memorandum to you, is this:

Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey mouse we are suffering.

Mr. MITCHELL. Well, Senator, I have testified this morning to the effect that there has never been any communication between the President and myself with respect to this antitrust legislation—litigation or any other antitrust litigation.

I call your attention under tab 45.2 to John Mitchell's log. You will notice, we draw attention to the fact that the log shows that at 6:05—this is March 14—President Nixon called Attorney General Mitchell. We have requested that conversation and it has not been supplied. Paragraph 46.

Mr. GEKAS. On March 15, 1972, E. Howard Hunt met with Colson, Johnson, and Timmons. It was determined that Hunt should interview Mrs. Beard respecting the authenticity of the purported Beard memorandum. Hunt flew to Denver and interviewed Mrs. Beard in her hospital room. On March 17, after his return to Washington, he prepared a detailed summary of the interview.

Mr. JENNER. Paragraph 47.

I should say, if I may interrupt a moment, the documents under the previous tab were received from the White House.

Mr. GEKAS. "ITT" is written on Colson's calendar for the morning of March 18, 1972, Colson had three telephone conversations with Mitchell during the morning. That afternoon, the President and Colson met for more than 2 hours.

Mr. COHEN. Mr. Chairman, could I just inquire, going back to item 46, when Hunt went to see Mrs. Beard, is that the time he went disguised with the red wig?

Mr. JENNER. That is the occasion.

Mr. DENNIS. Mr. Chairman, may I inquire of counsel?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I assume that, due to the new status of Mr. Colson, you gentlemen will be interviewing him at an early date for the purposes of seeing whether and when he should testify before this committee on what he may know about these matters?

Mr. JENNER. We intend to interview him at an early date, sir.

Mr. DENNIS. I would assume so. Do you intend to call him here and examine him under oath?

The CHAIRMAN. Well, the committee will determine that.

Mr. DENNIS. That is true, I assume.

It seems to me, Mr. Chairman, if I may be permitted to say so, that in view of these documents here, that should be an early determination by this committee.

The CHAIRMAN. I think counsel will proceed in the manner in which they have been proceeding and the committee will be, I think, advised sufficiently in advance so that we will get the benefit of whatever their interview has been, then make a decision.

Mr. JENNER. Mr. Gekas has read paragraph 47 to you. I direct your attention to the last sentence:

That afternoon, the President and Colson met for more than 2 hours.

We have asked for the tape upon which that conversation appears and we have not received it. Paragraph 48.

Mr. GEKAS. On March 24, 1972, the President held his only news conference during the period of the Kleindienst nomination hearings. He stated that nothing had happened in the Senate hearings that shook his confidence in Kleindienst as an able, honest man fully qualified to be Attorney General. He also praised the actions of Richard McLaren, and the administration, in having moved effectively to stop the growth of ITT.

Mr. JENNER. I direct your attention to 48.1, which is the President's news conference, a report of the President's new conference, on March 27, 1972.

At the top of page 674, the President says, "Now, as far as the hearings are concerned"—those are the Senate Judiciary Committee hearings—"there is nothing that has happened in the hearings to date that has in one way shaken my confidence in Mr. Kleindienst as an able, honest man, fully qualified to be Attorney General of the United States."

Now turn to 655, down about the fourth full paragraph. It reads:

Let me just say on that point that looking at ITT, which, as I understand, has been a contributor to a number of political causes over the years, it is signif-

cant to note—and I would hope that the members of the press would report this, because I have not seen this in many stories—it is significant to note that ITT became the great conglomerate that it was in the two previous administrations, primarily, the Kennedy administration and the Johnson administration. It grew and grew and grew, and nothing was done to stop it.

In this administration, we moved on ITT. We are proud of that record. We moved on it effectively. We required the greatest divestiture in the history of the antitrust law. We also, as a result of the concept decree, required that ITT not have additional acquisitions, so that it became larger.

Now, as Dean Griswold pointed out, that not only was a good settlement, it was a very good settlement. I think under the circumstances that gives the lie to the suggestion that this administration, in the handling of the ITT case, just using one example, was doing a favor for ITT. If we wanted to do a favor for ITT, we could just continue to do what the two previous administrations had done, and and that is nothing, let ITT continue to grow. But we moved on it and moved effectively.

Mr. McLaren is justifiably very proud of that record, and Dean Griswold is very proud of that record, and they should be.

Paragraph 49.

Mr. GEKAS. On the morning of March 30, 1972, Colson, Haldeman, and MacGregor met. That afternoon, Colson sent a memorandum to Haldeman stating that certain factors should be taken into account in determining whether to continue to support, or to withdraw, Kleindienst's nomination, including the possibility that documents would be revealed tending to show that the President was involved in the ITT situation in 1971 and contradicting statement made by Mitchell under oath during the hearings. Haldeman and Colson each had several conversations with the President on that day.

Mr. JENNER. We have asked through Chairman Rodino by a letter on April 19 for those conversations, the tapes upon which those conversations appear, and they have been refused.

The tab material which I will not undertake, because of the matter of time, to read to you in part does support fully every statement that is made and in information paragraph 49. Paragraph 50.

Mr. GEKAS. On April 4, 1972, Mitchell returned to his office after about 2 weeks in Florida. That afternoon, he met with the President and Haldeman at the White House. According to Haldeman's testimony before the Senate Select Committee on Presidential Campaign Activities, his notes taken during the meeting indicate that the Kleindienst hearings were discussed.

Mr. JENNER. Mr. Mitchell's log, which we received from the Senate select committee, confirms the occasion of the meeting and the meetings and conversations between the President and Mr. Haldeman on April 4, 1972. That material is received from the White House. Then you have H. R. Haldeman's testimony.

Mr. Gekas reminds me, and I failed to make a note of it, but it is important, that Mr. St. Clair has promised us that he will deliver—well, he has promised he will take up with the President—I do not want to compromise him—the matter of the delivery to this committee of the portion of the tape that reflects the ITT discussion, if any.

Mr. DOAR. I would like to add to that, Mr. Jenner, Mr. St. Clair told me we would be getting that, I think, tomorrow.

The CHAIRMAN. Which tape is this?

Mr. DOAR. The April 4 tape relating to the ITT matter—the transcript, the edited transcript.

Mr. JENNER. We have also asked for the April 5 tape of the conversation between the President and Mr. Colson between 11:45 a.m. and 12:23 p.m. and, as I say, on April 5, 1972, which has not been supplied.

The considerations, we think, on those tapes, are withdrawal of Mr. Kleindienst's nomination. And of course, the nomination was not withdrawn. So we believe that those conversations are quite pertinent to the inquiry of this committee.

Mr. DOAR. Mr. Chairman, before turning to tab 50, I would like to direct the committee's attention to tab 49.1 which is Mr. Colson's memorandum to Mr. Haldeman on March 25. At page 3375, paragraph 2, which refers to efforts being made at that time to recover documents or xeroxed copies of documents that might, as Mr. Colson says, put the AG on constructive notice, at least, of the ITT commitment at that time and before the settlement, facts which he has denied under oath.

Then the next sentence "We don't know whether we have recovered all these copies."

I am reading on page 3375 under 49.1, paragraph 2, at the bottom of the page. Then he says:

If known, this would be considerably more damaging than Reinecke's statement. Magruder believes it is possible the AG transmitted his copy to Magruder. Magruder does not have the copy he received. He only has a xerox of the copy. In short, despite a search, this memo could be lying around anywhere at 1701.

That is at the bottom of page 3375, 42.1. It is paragraph 2 of Mr. Colson's memorandum of March 3, 1972, to Mr. Haldeman. That is 49.1.

Mr. JENNER. I should also supplement, Mr. Chairman, if I may be permitted, that the attachments to which references are made on printed page 3375 appear seriatim under the series of tabs that follow 49.1.

I should also direct your attention to the fact that when Mr. Haldeman was examined before the Senate select committee, he was asked about these memoranda and whether he took the matter up with the President. He testified that he could not recall, but that these matters were of a character of importance that he would have taken the matter up with the President.

Mr. COHEN. Mr. Chairman, on 49.1, there is copy of the log of Haldeman, indicating on the same date of March 30, a copy for the President, Haldeman, and also with Colson. Have we requested tapes of those conversations as well, as to whether they pertained to the memos submitted by Colson to Haldeman on the ITT matter?

Mr. JENNER. We have requested in the April 19 letter at page 2, paragraph numbered 8, any conversation of the President with Mr. Haldeman and Mr. Colson or either of them between 5:32 p.m. and about 6:11 p.m., March 30, 1972, and in paragraph 7 of that letter, any conversation of the President with Mr. Haldeman and Mr. Colson or either of them, between 12:46 p.m. and about 2:32 p.m. on March 30, 1972. And they have not been supplied.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. May I ask this question?

In this memo of Colson, where it refers to a memorandum from

Herb Klein to Haldeman. I assume that relates to the Republican National Convention. Do we have that memo? Did we not look at that earlier though?

Mr. JENNER. We do have the memo. We looked at it earlier. Congressman McClory, during the course of the presentation.

Mr. McCLORY. So there is no mystery about that?

Mr. JENNER. No, there is not.

Mr. McCLORY. You are calling this to our attention. Mr. Doar just corroborates the knowledge of that memorandum that we had earlier?

Mr. DOAR. No, the point that I was calling to the committee's attention was that an instance of key White House officials collecting documents that might be politically embarrassing or in some way reflect or involve the President and—

Mr. McCLORY. Well, he states that the money, this commitment was made before the settlement and he was concerned about that—

Mr. DOAR. Yes, I was not calling attention to that paragraph. That document is attached here.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Is this reference on 3375, paragraph 2, the only, the most concrete indication that we have that the President may have known prior to the date of the ITT settlement that ITT had offered \$400,000 to the Republican Committee?

Mr. JENNER. That is true, sir.

Mr. OWENS. That is the only reference we have to that point?

Mr. JENNER. That is true.

Mr. OWENS. Thank you.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Is it correct that the memo referred to appears under tab 49.6?

Mr. JENNER. It does indeed. Paragraph 50, Mr. Chairman.

Mr. DENNIS. Did I understand that the memo at 49.6 is the one we referred to at page 3375, paragraph 2?

Mr. JENNER. 32 what, sir?

Mr. DENNIS. If I understand what you said here, the memorandum which appears at tab 49.6 is the memorandum which is referred to on page 3375, paragraph 2? I am trying to get whether that is right?

Mr. JENNER. You are correct, Congressman Dennis. Paragraph 50.

Mr. GEKAS. On April 4, 1972, Mitchell returned to his office after about 2 weeks in Florida. That afternoon he met with the President and Haldeman at the White House. According to Haldeman's testimony before the Senate Select Committee on Presidential Campaign Activities, his notes taken during the meeting indicate that the Klein-dienst hearings were discussed.

Mr. JENNER. Now, as to that meeting to which reference is made under 50.2 in the annotations, if you just stick with the paragraph without turning the pages, in addition to the reference, possible reference to ITT on April 4, 1972, tape or conversation Mr. St. Clair has reported and Mr. Doar will furnish tomorrow, we also asked and have not received—the April 19 letter, paragraph 11. Congressman—the telephone conversation between the President and Mr. Colson between

about 11:46 a.m. and 11:09 a.m. on April 4, 1972. And second, in paragraph 12, any conversation of the President with Mr. Mitchell and Mr. Haldeman or either of them between 4:13 p.m. and about 4:50 p.m., April 4, 1972, neither of which we have received.

Mr. COHEN. Mr. Jenner, going back to tab 49.14, I notice when you answered the question before you did not refer to the conversation where it says the President met with Haldeman from 5:30 to 6:08 and then Colson from 5:51 to 6:11. Did you also request that?

Mr. JENNER. Paragraph 8 is any conversation of the President with Mr. Haldeman and Mr. Colson or either of them between 5:30 p.m. and about 6:11 p.m. on March 30, 1972. Paragraph 51.

Mr. GEKAS. On April 27, 1972, the final day of the Kleindienst confirmation hearings, Kleindienst, referring to his earlier testimony about communications with persons at the White House, testified that if someone had called him to instruct him on the handling of the ITT case, he would remember such a call. Kleindienst said that no such conversation occurred.

Mr. JENNER. That paragraph is in part a quote, which you will find under tabs 51.1 and 51.2. And may I read just a short paragraph at printed page 1682, under tab 51.1, at the bottom of the page. He is responding to Senator Fong's questions:

Because I tried to make it clear, Senator Fong, that in view of the posture I put myself in, in this case, I could have had several conversations, but I would have had a vivid recollection if someone at the White House had called me up and said, "Look, Kleindienst, this is the way we are going to handle that case." People who know me, I don't think would talk to me that way, but if anybody did it would be a very sharp impact on my mind, because I believe I know how I would have responded.

No such conversation occurred.

Next paragraph.

Mr. GEKAS. Tab 52, the press provided extensive news coverage and frequent editorial commentary on the Kleindienst confirmation hearings. John Mitchell's denials that he discussed the ITT cases with President Nixon were reported. Richard Kleindienst's descriptions of his role in the *ITT-Grinnell* appeal and settlement were also reported. These descriptions omitted reference to the President's order that the appeal be dropped.

Mr. JENNER. Now, ladies and gentlemen, in addition to the press clippings from the New York Times and the Washington Post that are included under this tab, we have reviewed the articles on ITT and Kleindienst from Time Magazine. These articles also show a great interest in the allegations about political influence in the Justice Department. In fact, several pages of coverage for 3 weeks were devoted to this item. Again, Mitchell's and Kleindienst's versions of their involvement in the *ITT-Grinnell* negotiations were prominently featured.

Now, tab 52.1 consists of newspaper articles regarding the hearings on the nomination of Richard Kleindienst to be Attorney General and are taken from the New York Times and the Washington Post. And because there are so many, we have made up a book of those press clippings. And because of the book, we did not include them in the presentation book, but we have about 10 copies should any member of the committee wish to look at them assembled under the one set of covers and we have additional copies, of course, over at the staff. *

Ms. HOLTZMAN. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you. Mr. Jenner, do we have any information that Mr. Kleindienst discussed the testimony that he gave before the Senate select committee with anybody at the White House, at or about that time, including the President?

Mr. JENNER. I regret to say that we do not.

Ms. HOLTZMAN. Has Mr. Kleindienst been interviewed on this point?

Mr. JENNER. Not yet, and I emphasize yet.

Ms. HOLTZMAN. Thank you very much.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Jenner, to follow up on the press clippings there, we know that each morning the President has a summary presented for him of the press, and what is said, and we also know that it is given to him. Do we have access to those summaries of the press that are given to the President, and whether or not he has initialed them and read them concerning the testimony given by Mr. Kleindienst and Mr. Mitchell as to the role that they had in this matter?

Mr. JENNER. We do not have access to those as yet. None have been produced. And we could have asked for those by way of a letter request or subpoena.

Mr. MEZVINSKY. I think that there would not be any objection to receiving the press summaries that the President has submitted to him. I would request that information.

Mr. JENNER. Congressman Mezvinsky, we will pursue that.

Mr. MEZVINSKY. Thank you.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Have we verified whether Mr. Kleindienst finally got around last December, whenever it was, to telling the grand jury that he had mistestified, have we had access to that testimony, to see if he might have reported on any further conversations with the President in this regard, or to what he said in effect when he clarified his testimony? It seems like to me that testimony might be relevant, might it not?

Mr. JENNER. Congressman Owens, we would regard it as relevant. We do not have it. The grand jury testimony we received was the grand jury presentment which Judge Sirica determined should be delivered to this committee.

Mr. OWENS. At the time you visit with Mr. Kleindienst, I suppose you would ask him obviously if he had any further conversations with the President?

Mr. JENNER. Yes. Mr. Chairman, we will make notes of Congressman Owens' comment and undertake to see if we can obtain that material. We have been successful from some judges, some of the district judges, permitting us to read the grand jury material.

The CHAIRMAN. All right. Will you proceed, Mr. Jenner.

Mr. JENNER. Tab 53.

Mr. GEKAS. By letter dated April 25, 1972, from Senator Eastland, chairman of the Senate Committee on the Judiciary, to SEC Chair-

man William Casey, Senator Eastland requested access to ITT documents in possession of the SEC. This request was denied by Chairman Casey. If Chairman Casey had complied with the Senate Judiciary Committee's request, the SEC would have supplied the committee with, among other things, the following documents not obtained by the committee during the course of the Kleindienst hearings—

Mr. JENNER. Mr. Chairman, with your permission and the consent of the distinguished members of the committee, in the interests of time may we defer reading the subnumbered paragraphs? They are concisely stated, and the members of the committee may review them at their leisure. They also are the documents to which we have already called your attention in the presentation up to the moment and the point of the paragraph is that the Senate Judiciary Committee would have had these documents before it. Paragraph 54.

Mr. GEKAS. On June 8, 1972, the Senate confirmed Kleindienst's nomination. On June 12, 1972, he became Attorney General.

Mr. JENNER. I draw your attention to, but will not read the President's remarks on the occasion of Mr. Kleindienst's invocation. They appear under tab 54.2. Paragraph 55.

Mr. GEKAS. On three occasion is September 1972, Congressman Harley Staggers, chairman of the House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations requested from SEC Chairman William Casey access to material received from ITT by the SEC in connection with the SEC's investigation of ITT. Chairman Casey discussed Chairman Staggers' request with Mitchell, Dean, and Colson. By letter to Chairman Staggers, Chairman Casey refused the requests. The ITT material was transferred by the SEC to the Department of Justice on October 6, 1972. In addition, an envelope containing other documents obtained from the ITT, which reflected contacts in 1970 and 1971 between representatives of ITT and administration officials was delivered separately by the SEC to the Office of the Deputy Attorney General Erickson.

Mr. JENNER. In an effort to assist you, Mr. Chairman, and ladies and gentlemen of the committee, if you will follow me on paragraph 55, I will give you the subtab references which you may note to assist you in dealing with the number of tabs appearing. If you will follow me, please, on three occasions, those are 55.1, 55.2, and 55.3.

Then Chairman William Casey's access to material received from ITT by the SEC in connection with the SEC's investigation of ITT, make the following notes: 55.4, at page 241, 260, 261, and 262.

Then in the sentence where Staggers' request with Mitchell, Dean, and Colson, the request with respect to Colson is 55.4, page 262. As to Mr. Dean, it is tab 55.4 at pages 235 and 250.

Dropping down, Chairman Casey refused the request, you will find that at tab 55.5, page 5 and 55.6.

The next sentence, the ITT material was transferred by the SEC to the Department of Justice, those tabs are 55.4, page 251; 55.6; 55.7; 55.8.

To the Department of Justice on October 6, that October 6, 1972, you will find at tabs 55.8, 55.9, pages 29 and 130.

The documents obtained from ITT, which reflected contacts in 1970 and 1971, you will find at 55.9, pages 149 to 164.

And lastly, was delivered separately by the SEC to the Office of Deputy Attorney General Ralph Erickson. you will find those tabs at 55.8, pages 87 and 88; 55.9, page 149. Paragraph 56.

Mr. GEKAS. In a letter dated October 17, 1972, Chairman Staggers requested from Deputy Attorney General Erickson access to the ITT materials referred to the Department of Justice by the SEC. Erickson denied the request on the ground that disclosure might prejudice any future criminal proceedings.

Mr. JENNER. This was 3 weeks before the election. Paragraph 57.

Mr. GEKAS. On January 8, 1974, the Office of the White House Press Secretary issued a white paper entitled "The ITT Antitrust Decision," describing the President's role in the ITT antitrust cases and their settlement.

Mr. JENNER. You will find that white paper reproduced under tab 57.1. Paragraph 58.

Mr. GEKAS. On May 16, 1972, Richard Kleindienst pleaded guilty to one count of refusing to or failing fully to respond to questions propounded to him by the Senate Committee on the Judiciary on March 2, 3, 7, and 8 and April 27, 1972.

Mr. JENNER. Mr. Chairman, that completes the presentation.

The CHAIRMAN. Thank you very much.

And the committee will recess until 10 o'clock tomorrow morning.

Mr. JENNER. Mr. Chairman and ladies and gentlemen of the committee, I think most of you, at least, know that I am chairman of the Supreme Court Advisory Committee on Federal Rules of Evidence, and Mr. Hungate and Mr. Hogan and Mr. Dennis testified today, and I advised Senator Ervin, and also Senator Hruska, that if we completed ITT today, I might be able to appear before that committee tomorrow. And do I have your permission, Mr. Chairman, and the committee's?

The CHAIRMAN. I am sure you do. It will be in the interest of the committee.

[Whereupon, at 7:08 p.m., the committee was recessed to reconvene on Wednesday, June 5, 1972, at 10 a.m.]

IMPEACHMENT INQUIRY

Executive Session

WEDNESDAY, JUNE 5, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Robert D. Sack, senior associate special counsel; Fred H. Altshuler, counsel; Evan A. Davis, counsel; Roscoe B. Starek, counsel; and Robin Johansen, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

Mr. Doar, would you advise us whether or not we could expect at some time around 12 o'clock or so, that the one tape you have, which I understand is going to take 1 hour or 2, that we will be able to play it at about that time, and will it conform with the presentation that you are making at that point, your paragraph presentation?

The reason why I ask is because we do have a bill which I know a lot of members are going to want to be on the floor to listen to; there are going to be considerable amendments and there are going to be 2 hours of general debate on the Sugar Act amendment. If we could, I would like to go on until we at least listen to the tape and then recess for a while.

Mr. DOAR. I think that could be done, Mr. Chairman. I will make every effort to move quickly through the paragraphs. We will have to get to the 27th paragraph before listening to the tapes.

The CHAIRMAN. OK.

Mr. DOAR. Some of them are short.

This morning, members of the committee, we are presenting to you the information with respect to allegations including the contributions by the dairy industry. With me this morning are several lawyers that have not been introduced to you.

On my far right is Ross Starek, a member of the staff hired by the minority. He is a graduate of the American University Law School, class of 1973.

To my immediate left is Fred Altshuler, who is a member of the majority staff. He is a graduate in 1968 of the University of Chicago Law School.

Behind me, the young lady is one of our research assistants, Robin Johansen, whose primary duties have been assisting the lawyers preparing this presentation. Robin is a graduate of the University of Illinois.

You know Bob Sack and Sam Garrison who is here. Mr. Jenner will join the meeting as soon as he gets back from the Senate. Tab No. 1.

Mr. ALTSHULER. Tab No. 1, prior to August 2, 1969, Milton Semer, a lawyer for the predecessor organization of Associate Milk Producers, Inc. (AMPI), a large milk producers' cooperative, told Herbert W. Kalmbach, the President's personal attorney and political fund raiser, that Semer's client wanted to make a political contribution. Semer told Kalmbach that his client had three goals: (1) milk price supports at a level of 90 percent of parity; (2) a Presidential address to the AMPI convention the following year; and (3) some identity or audience with the President, such as picture taking and the ability to talk to various people within the White House. Kalmbach has testified that he informed Haldeman of AMPI's goals and its desire to make contributions and that Haldeman authorized Kalmbach to accept the contribution. Haldeman has stated that Kalmbach reported to him generally on fundraising activities but that he does not recall Kalmbach's reporting on the milk producers contribution.

Mr. DOAR. Tab 1.3 is from Kalmbach's testimony, and at page 6, Mr. Kalmbach testifies to his instructions from Mr. Haldeman. Mr. Kalmbach and another two individuals were trustees of certain funds that were left over from the 1968 campaign and according to Mr. Kalmbach, Mr. Haldeman told him that in addition to that fund, he was to retain the nature of the funds as he received them insofar as it was possible. That was that the cash he received should remain as cash and the checking account established for checks should remain in the checking account.

Mr. Kalmbach is a very, very meticulous lawyer with respect to records, as you will see from the calendar on 1.4. His diaries as to his meetings really are, as you will see, reflective of an organized, disciplined attention to detail kind of businesslike lawyer's mind.

At the top of 1.4, the second of April, you will see that it reflects the first meeting that he had with Mr. Semer. If you were to go through these meetings, the next day, on the third, he had a meeting with the same gentlemen. On the 4th, at the top of the page, he called Mr. Semer.

Then on June 12, at 2 o'clock, in the afternoon, he had a meeting with Mr. Semer.

Then on the 13th, on the right-hand column, there is a reference to the same gentleman.

Then at 6 o'clock on Saturday, the 28th, he called him at his residence.

On the 10th of July, there is another reference to his contact.

Then on the 2d of August, you will see Mr. Kalmbach's notes as to the objectives that Mr. Semer was trying to achieve for his clients—the 90 percent price supports; the address by the President at the next annual convention; then a meeting with the President, for picture-taking and so forth. Tab No. 2.

Mr. LATTI. Mr. Chairman?

The Chairman. Mr. Latta.

Mr. LATTI. Mr. Chairman, I want to point out that in tab No. 1.1, the testimony of Mr. Semer, particularly at paragraph 6, where it says:

In part, it appeared that this would involve presenting their arguments to the White House—which, during the Kennedy and Johnson administrations had actively participated in decision on such issues and presumably would continue to do so.

Then this next paragraph, where it points out that the client was organizing a political fund, the trust for agricultural and political education, to raise funds from their members for distribution to candidates of both major political parties in local, State, congressional and Presidential campaigns.

So it was not an isolated fund-raising activity.

Mr. DOAR. No. I did not mean to suggest that. Also, I think it is fair to say that it appears that they were trying to model their fund raising after the AFL-CIO method of raising funds, setting up trust funds, which I confess I am not completely familiar with.

Mr. LATTI. Neither am I, but I know it is done.

Mr. KASTENMEIER. Mr. Chairman, just a technical thing that may be a matter of error or not.

You indicate in this paragraph that Mr. Semer is a lawyer for the predecessor organization of AMPI but Mr. Semer indicates that he, when describing his relationship with AMPI, there is no indication that he was a lawyer for the predecessor organization.

Mr. DOAR. Well, the predecessor organization was really the same organization, except that it merged into a slightly larger organization and became AMPI after 1969. But it is substantially the same group of dairy interests.

Mr. KASTENMEIER. Well, it is not clear there.

Mr. DOAR. We will correct that and separate that. Paragraph 2.

Mr. MAYNE. Mr. Chairman, I would like to ask Mr. Doar a question.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I notice, Mr. Doar, that several times, the reference has been made to this as AMPI, but in all mention of it that I have ever heard out in the field in the agricultural areas where it operates, it is referred to as A.M.P.I. I just think we might be confused if we are using both terms. Have you and your staff developed that this is the abbreviation that is used by the Milk Producers Association themselves, in order to deal with it?

Mr. DOAR. No, I have not. If they have used AMPI, then that is what we should use.

Mr. MAYNE. I know in the Agriculture Committee hearings and all the hearings over there, it is all AMPI.

The CHAIRMAN. I think it would be well to use that.

Mr. DOAR. Tab 2.

Mr. ALTSHULER. Tab No. 2, on August 2, 1969, Semer on behalf of AMPI delivered \$100,000 in cash to Kalmbach. Kalmbach added the cash to the surplus funds from the President's 1968 campaign that were in Kalmbach's custody. Kalmbach used this fund on behalf of the White House for, among other things, making payments to Tony Ulasewicz and to the Albert Brewer campaign against George Wallace.

Mr. DOAR. Tab 2.3 indicates that, in Mr. Kalmbach's testimony, within a week or so after he received this \$100,000 contribution in cash, he reported it to Mr. Haldeman.

Mr. DOAR. Paragraph 2.4 is Mr. Ehrlichman's testimony that he was aware of the contribution and that he used the funds for purposes. Tab. No. 3.

Mr. ALTSHULER. Tab No. 3, Kalmbach has testified that between August 2, 1969, and August 9, 1969, he reported to Haldeman that he had received the \$100,000, and again stated to Haldeman the objectives Semer had given. Kalmbach also informed John Ehrlichman, Maurice Stans, Jack Gleason, then an aide to Maurice Stans and later a White House aide, and assistants to the President Peter Flanigan and Harry Dent of the contribution and he telephoned one or more of them to arrange for meetings between AMPI representatives and White House aides. On August 19, 1969, Semer, AMPI General Manager Harold Nelson, and AMPI Special Counsel David Parr, met with Dent at the White House to discuss dairy industry problems and to invite the President to address an AMPI annual meeting.

Mr. DOAR. Mr. Kalmbach at 3.1 expands his testimony somewhat with how he was first referred to this organization by John Mitchell and he again elaborates on his reporting to Mr. Haldeman about the contribution. Tab No. 4.

Mr. ALTSHULER. Tab No. 4, by memorandum dated June 24, 1970, White House aide Jack Gleason turned over most of the responsibilities with regard to the milk producers to special counsel to the President Charles Colson. Gleason stated that Colson would handle outstanding items including the possibility of the President speaking in September at the AMPI annual meeting in Chicago and the possibility of the President making an emergency reduction of import quotas on dairy products. Attached to the memorandum was a draft letter prepared by Parr that could be used by the Secretary of Agriculture to recommend that the President take immediate action imposing limitations on imports of certain cheeses and other dairy products.

Mr. DOAR. I believe Mr. Colson came to the White House sometime in late 1969 as Special Counsel to the President and he took over responsibilities for dealing with so-called special interest groups on behalf of the White House. That included labor organizations, the milk producers, and others.

The memorandum from Mr. Gleason to Mr. Colson at 4.1 indicates that Gleason will continue to handle—this is at 4.1 on the first page, the end of the first paragraph, that Gleason will continue to handle with Dave Parr or coordinate on the collection and distribution of support. Tab No. 5.

Mr. ALTSHULER. Tab No. 5, in the June 24, 1970, memorandum from Gleason to Colson referred to in the preceding paragraph. Gleason stated that AMPI Special Counsel Parr would coordinate directly with Gleason on collection and distribution of support. During 1971, AMPI and other dairy organizations pledged or contributed approximately \$135,000 to a special White House project administered by Gleason and Kalmbach that designated certain congressional candidates to receive contributions and distributed the contributions.

Mr. DOAR. The tabs behind this reflect the source of this money along with a list of a number of other contributions in connection with Herbert Kalmbach's 1970 congressional campaign fund raising. Directing your attention to 5.4, which is a letter from Mr. Kalmbach to H. R. Haldeman, in which he sets forth a listing of the persons that he contacted, he explains the circumstances with respect to the securing of amounts pledged or the reason why he was unable to secure a delivery of the contribution consistent with the commitment. Tab No. 6.

Mr. ALTSHULER. Tab No. 6.

Mr. LATTI. Mr. Chairman? May I ask a question?

The CHAIRMAN. Mr. Latta.

Mr. LATTI. In 5, you say Kalmbach designated certain congressional candidates to receive contributions and distribute the contributions. Do we have a list of those?

Mr. DOAR. We do not have this material. We do have Mr. Kalmbach's notes, handwritten notes, that indicate contributions to certain individuals. We were not able to determine whether or not it was comprehensive.

Mr. LATTI. I was quite curious. My understanding is that I have supported dairy people for years and they never gave me a dime.

Mr. McCLODY. What about 5.5? That designates 1, 2, 3, 4, 5 candidates. There would be more than that, I would imagine.

Mr. DOAR. That is just one letter to one contributor. There are many more letters than that.

Mr. McCLODY. And we do have that information?

Mr. DOAR. We do have it. We do not know whether it is comprehensive. We do not know whether it covers everybody.

Mr. Garrison has pointed out to me that the \$135,000 comes from 5.6, the letter from Patrick Hillings to the President, whereas Mr. Kalmbach's notes and his letter indicate that the amount was \$110,000.

Mr. GARRISON. But that \$110,000 was from AMPI alone and apparently, the discrepancy between the two figures is attributable to contributions from other associations.

Mr. DOAR. Tab No. 6.

Mr. ALTSHULER. Tab No. 6, before September 9, 1970, AMPI representatives stated to Colson that AMPI would arrange for \$2 million to be contributed to the President's 1972 reelection campaign.

Mr. DOAR. Tab No. 6.1 is Mr. Colson's memorandum to the President. We have retyped the memo, but the committee members may wish to look at the actual Xerox of the original, because the underlining there is part of the original. The bracket around those two stars were placed there by your staff. That paragraph reads:

The Milk Producers have made very significant contributions to various key Senate races in which we are interested this fall (approximately \$150,000 in total). They have also pledged \$2 million to the 1972 campaign.

Mr. SEIBERLING. Mr. Chairman, but the staff did not add the underlining?

Mr. DOAR. No, we did not.

Mr. SEIBERLING. That is in the original?

Mr. DOAR. Yes.

Mr. SEIBERLING. Thank you.

Mr. COHEN. In paragraph C. What is the reference to the special milk program "we had previously opposed?" It is paragraph C of 6.1. the second page.

Mr. DOAR. That is the school milk program. The Government subsidizes the cost of the milk purchases on the school program.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Mr. Doar, do you have the information as to how much was pledged to be contributed to the Johnson and McGovern campaigns?

Mr. DOAR. No, I do not.

Mr. MARAZITI. Thank you. Is that available?

Mr. DOAR. Well, I suppose it is available.

Mr. Starek has been looking into those questions and he says we have not been able to get comprehensive records for the Johnson administration. We have all the information from 1972 and we will furnish that to you.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Can you tell me what Pat Hillings' specific job was?

Mr. DOAR. He was a lawyer.

Mr. HOGAN. A lawyer to the industry?

Mr. DOAR. He was counsel to the AMPI.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. At 1.4, I think Mr. Latta alluded to that earlier, where they outline they are seeking three things—price supports, picture-taking, and a Presidential address to the convention. I can follow that.

Now at another point, they refer to Kalmbach and \$112,000 to Mr. Sener. What I have difficulty in is how this comes out as cash. Is there anything in your studies that indicates why this is specifically cash and not a check?

Mr. DOAR. There is conflicting testimony on that. Mr. Kalmbach testified that AMPI offered the money in cash; AMPI officials say that Mr. Kalmbach requested it in cash.

Mr. HUNGATE. Do we know whether—did they refer back to the Johnson administration? If they did, were those contributions in cash? This is the troublesome part to me.

Mr. DOAR. We do not know that.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, what evidence do we have that the President actually saw this memo?

Mr. DOAR. I did not understand the question.

Mr. OWENS. What evidence or indications do we have that the President actually saw this memorandum that Mr. Colson wrote?

Mr. DOAR. The President's white paper on milk says that he saw the memorandum.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Regarding the \$100,000, do we have any record as to whether that was reported out of the AMPI trust fund or whether or not it came out of some other fund beside the trust fund?

Mr. DOAR. No, we do not at this time. That is not a legal contribution.

Mr. MEZVINSKY. Was it reported—well, no, did they not have to file a report as to their contribution?

Mr. DOAR. No. But I think there was a limit, I believe there is a limit on contributions and trust funds in the amount of \$5,000 to any one particular committee and as you will see as we go through the testimony—although it may be that I will not detail it all—there was a continual discussion between the AMPI officials and the fund raising officials of the Nixon administration with respect to setting up these committees. That never seemed to have been satisfactorily resolved until the Finance Committee to Reelect the President was organized.

Mr. MEZVINSKY. So far as their records, as far as AMPI records, there is no reporting at all, there is no indication of a \$100,000 payment out? Do we have any check that will tell you that—

Mr. DOAR. Let me ask Mr. Altshuler to reply to you because he is familiar with that.

Mr. MEZVINSKY. OK.

Mr. ALTSHULER. Congressman, the contribution was originally made out of the trust fund. The AMPI people found out in late 1969 that it was an illegal contribution because it exceeded the \$5,000 spending limitation. They then funneled corporate funds into the trust fund to replace the amount that they had given to Kalmbach, thereby making it again an illegal contribution because it was an expenditure of corporate funds. The AMPI people themselves have performed an audit and have interviewed all the people involved and have made public the full nature of all the transactions. The transactions, to the best of my knowledge, were not reported according to the legal reporting requirements.

Mr. MEZVINSKY. The transaction was not recorded and we have a disclosure of the appropriate funds?

Mr. ALTSHULER. That is right. AMPI officials themselves have testified that the individuals would not have known.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. These contributions that were made to the White House—apparently, there were two separate ones of \$100,000 in cash. Is it our belief that the \$100,000 was thought to be given by the donors for candidates other than the President's next campaign? Is that not the connection that was made by one of the donors?

Mr. DOAR. The 1970 contributions were for the benefit of two congressional candidates in the 1970 race. The first \$100,000 came about because this AMPI organization had theretofore been a supporter of Democratic candidates. It had not supported the President in the 1968 election. At least that is what appears to me from the testimony in that the organization wanted to establish a relationship. And I do not—a way to bring their problems to the attention of the administration. They wanted to let the administration know that they supported it. So they offered and received a contribution of \$100,000 in 1969.

Mr. RAILSBACK. That \$100,000 was made in 1969, which was, of course, not an election year for the President. But your feeling is that even the donors believed that it was to be used in the future Presidential campaign rather than screened by the White House and given to different congressional candidates.

Mr. DOAR. The AMPI officials just regarded it as a contribution and they did not know who it was going to or what it was going to be used for.

Mr. RAILSBACK. I see.

Mr. SMITH. Will the gentleman yield?

Mr. RAILSBACK. I will be glad to yield.

Mr. SMITH. I would like to point out that under 1.1, Mr. Semer's statement at the bottom of the page, Mr. Semer says:

At this time, it was my understanding, and I thought it was Mr. Kalmbach's, that the client would be making, through its trust fund, a series of political contributions to committees for 1970 congressional candidates, to be reported by tape and by the recipient committees. It had been a common practice for past administrations to "piggy-back" such contributions—that is, to transmit them through the incumbent administrations, allowing it to share credit for the contributions with the donor—and I had discussed this political technique with both the client and with Mr. Kalmbach.

Thus it was that on August 1, 1969, I flew to Dallas, Texas, to receive from the client for delivery to Mr. Kalmbach the next day a contribution of \$100,000 in cash.

Mr. RAILSBACK. That is what I had reference to.

Mr. DOAR. That was not Mr. Kalmbach's recollection of the contribution. So among their own people, the specific purpose of the contribution, other than that it was a political contribution, was not absolutely established.

Mr. COHEN. Mr. Doar, may I ask one more question?

Do you know whether or not Mr. Semer was known for arranging contributions to Senator Muskie and Senator Humphrey? I notice here on 1.1, he was also Treasurer to Senator Muskie's campaign in 1969 for the campaign for Vice President and also for Senator in 1970.

Mr. DOAR. Mr. Semer was a fundraiser for Senator Muskie.

Mr. COHEN. Would that be true also of the 1972 Presidential campaign?

Mr. DOAR. We do not know that. I can find out.

Mr. COHEN. If you would.

Mr. DOAR. Tab No. 7.

Mr. ALTSHULER. Tab No. 7, on September 4, 1970, the President telephoned AMPI General Manager Nelson at the AMPI convention in Chicago, expressed his regret at being unable to attend the AMPI

convention, and invited Nelson to meet with him in Washington to arrange a meeting with a larger delegation of dairy leaders at a later date.

On September 9, 1970, Parr and Nelson had a 9-minute "photo opportunity" meeting with the President and Colson at the White House. In preparing for the meeting, the President reviewed a memorandum by Colson which stated that the Milk Producers had pledged \$2 million to the 1972 campaign. Colson said in the memorandum that it would be most helpful if the President would tell Nelson and Parr that he was aware of their political support, what they had already done that year to assist, and what they were committed to do in the future.

Colson said that if the visitors realized that the President was aware of what they were doing, it would strengthen very much Colson's hand in dealing with them. Parr has testified that during the meeting, the President stated that he had heard some very good things about AMPI and that he wanted to address an AMPI convention.

Mr. DOAR. The annotated material behind this is the same memorandum that I have already called your attention to, as well as the President's white paper and the testimony of David Parr.

Mr. Parr is General Manager Nelson's assistant at AMPI. Paragraph 8.

The CHAIRMAN. Mr. Doar, is the white paper included in totality here? Mine seems to have only three pages of it.

Mr. DOAR. No, it is not included in totality because we have included it in totality at another tab of the book.

Mr. HOGAN. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. With reference to the point Mr. Smith made about what this money was for, I note in the Pat Hillings' letter to the President dated December 16, 1970, he indicates that AMPI contributed about \$135,000 to Republican candidates in the 1970 election, and that they are now working in order to make a contribution to the President's reelection. So he and Semer both seem to indicate that this was a contribution for Republicans running for office in that off year.

Mr. DOAR. Well, Congressman Hogan, that is not the \$100,000.

Mr. HOGAN. That is a different \$100,000.

Mr. DOAR. That is a different \$110,000 that they gave the following year.

Mr. HUNGATE. What tab is that?

Mr. HOGAN. Tab 5.6.

Mr. DOAR. If you would look at 5.2 the last pages—

Mr. GARRISON. Members of the committee, the last four pages of 5.2, starting with the heading, "1970 Contribution File", consists of an end of the year accounting by Mr. Kalmbach of pledges which were fulfilled specifically for the senatorial campaign program. This is what we call operation townhouse. You will note that on page 2 of that accounting, the bracketed name, David Parr, has \$110,000 listed beside it. That \$110,000 was pledged and apparently contributed as part of the senatorial campaign fund raising activities that year. This, so far as we can tell, was not the same amount of money that the \$100,000 contributed in 1969—1970 contribution file.

Mr. DOAR. I can add to that. This \$110,000 was all reported and it all was paid by check. So we have that—the other was cash.

Mr. HUNGATE. If the gentleman will yield, this list, 5.2, is not dairy contributors, though?

Mr. DOAR. Oh, no.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. With respect to the \$135,000 contribution which was specifically intended to go to congressional candidates, did AMPI ask for any records from the White House with respect to what congressional candidates that money was used for?

Mr. DOAR. We do not have specific evidence of that, but that is the project for political support for candidates in the 1970 election known as the townhouse program. The White House would designate candidates to receive this money and the donors would be advised of it.

Ms. HOLTZMAN. But no such request was made with respect to the \$100,000 cash contribution?

Mr. DOAR. Not to our knowledge.

Ms. HOLTZMAN. Thank you.

Mr. DOAR. Tab No. 8.

Mr. ALTSHULER. Tab No. 8, on September 16, 1970, Charles Colson wrote a memorandum to John Dean saying that a group that provides strong political and financial backing had asked for information regarding limitations on campaign contributions. Colson asked Dean to get a quick reading from the Justice Department because Colson did not want to keep the group hanging and their funds were needed. At the bottom of the carbon copy of the memorandum is the handwritten name and telephone number of Bob Isham, the AMPI comptroller.

Mr. DOAR. Tab 8.1 shows the memoranda, which makes no reference to AMPI, but you see the writing, "Bob Isham", at the bottom, with his telephone number.

Then Mr. Lilly's testimony at 8.2 identifies who Mr. Isham is.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Do we have any evidence as to how the name "Bob Isham" got on this document? Anybody can write his name on it.

Mr. DOAR. Well, it came from the, the document came from the White House.

Mr. SEIBERLING. And it was in that form when it arrived?

Mr. DOAR. Yes, when it arrived.

There was also attached to it at 8.1 behind that a note, Mr. Isham says he has resolved this earlier but appreciated the message. That came with the document that came from the White House. Tab No. 9.

Mr. ALTSHULER. Tab No. 9, in the fall of 1970, at Haldeman's direction, Colson began coordinating outside funding activities for various White House projects including the use of a Washington, D.C., public relations firm to place advertisements and undertake other activities in support of administration policies. The project contemplated the use of front organizations. Colson stated that some friends had retained a public relations outfit which gave them the financial resources to do things for the White House.

Colson stated in a memorandum to Haldeman that once the project was fully set up, the White House would have available about \$100,000

per year through this resource. During 1971 and 1972, the Washington, D.C., public relations firm of Wagner & Baroody placed advertisements in the name of various private groups in support of administration policies.

Mr. DOAR. Paragraph 9.1 is a memorandum from Haldeman to Mr. Colson, Mr. Dent, Mr. Klein, and Mr. Magruder, which reads as follows. It is dated August 7, 1970:

As we develop our various outside projects, it becomes obvious that a lack of coordination with regard to financial resources has caused an overburdening of some potential resources, while totally neglecting others. In order to remedy this situation, I propose that Chuck Colson be placed in the position of coordinator for contacting these individuals. This will prevent several of you who have projects going at the same time from approaching the same person and thereby decreasing the effectiveness of our overall effort.

If there is a problem with this, get together with Chuck and work out another solution, otherwise let us consider this standard operating procedure for the future.

Page 9.3 is a memorandum to Mr. Colson. Pardon me, paragraph 9.2 is a memorandum from Mr. Magruder to Mr. Haldeman dated April 18, 1970, with respect to fundraising. And I just call your attention to the last sentence on page 2 of that memorandum. It shows a blind copy goes to Mr. Colson.

By funding through the RNC and using them as our front, we can be assured if they are caught it would not have the same impact as it would if we were put in the same position.

And paragraph 9.3, yesterday, there was a memorandum marked "secret". Yesterday there was a question as to what was the meaning of these various labels on these memorandums. And going through the material here in connection with this matter memorandums marked "confidential", memorandums marked "eyes only", and memorandums marked "secret". I do not understand the reason or the basis for the various designations.

In paragraph 3 Mr. Colson is referring to this public relations firm to do things in their behalf, and in the last sentence, says, "They were exceedingly effective and provided a perfect cover for us." Tab No. 10.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Doar, I notice in 9.3, in paragraph 3 on the first page, a reference to the public relations firm. They say in the second sentence, "They handle much of the ABM effort financially and also are subsidizing the overhead of Americans for Winning Peace." Has that been explored at all, or what is that about?

Mr. DOAR. We have not tried.

Mr. RAILSBACK. What I wonder is if that is some kind of an executive branch finance campaign?

Mr. DOAR. I cannot tell you that. I would ask Mr. Altshuler to tell you what he knows about it. But, it is not just—

Mr. RAILSBACK. I do not want to take up the time of the committee, but I just am curious, and maybe I can talk to him later about it.

Mr. EDWARDS. Who was Heard? Anti-Heard material was mentioned there.

Mr. DOAR. We can check on that. Tab No. 10.

Mr. ALTSHULER. Tab No. 10, on or about November 3, 1970, Colson sent a memorandum to Murray Chotiner noting that AMPI's political

trust had contributed to unopposed democratic congressional candidates and asking Chotiner to tell AMPI's lawyer, Marion Harrison, that if he wanted to play both sides, that is one game, but if he wanted to play the administration side, it was entirely different. Colson said that this would be a good way to condition Harrison for putting the screws to him on imports, which they were about to do.

Mr. DOAR. Tab No. 11.

Mr. ALTSHULER. Tab No. 11, in late November 1970, Colson, Kalmbach, Nelson, Parr, AMPI lawyers Harrison, and Patrick Hillings, and Presidential campaign fundraiser, Tom Evans met in Kalmbach's hotel room in Washington, D.C., and discussed procedures whereby AMPI's contributions to the President's reelection campaign could meet statutory reporting requirements without resulting in publicity.

Mr. DOAR. Mr. Kalmbach's testimony is at 11.2 at pages 40 and 41, and indicates that he took an early fundraising assignment after the 1970 election, after he had met with Mr. Haldeman. Tab No. 12.

Mr. ALTSHULER. Tab No. 12. On December 16 or 17, 1970, AMPI lawyer Hillings, hand delivered to the White House a letter to the President requesting that the President adopt a Tariff Commission recommendation to restrict imports of chocolate crumb and other dairy products. The letter stated that AMPI had contributed about \$135,000 to Republican candidates in the 1970 election; was now working with Tom Evans and Herb Kalmbach in setting up appropriate channels for AMPI to contribute \$2 million for the President's reelection, and also was funding a special project.

The letter was routed to Haldeman, Ehrlichman, and Colson. According to the White House "white paper" on the milk price support decision, the President did not see the letter.

Mr. DOAR. Tab No. 13.

Mr. GARRISON. Members of the committee, one comment. The Tom Evans who was referred to in this in the preceding paragraph was a member of the law firm which Mr. Nixon and Mr. Mitchell had formerly been members of, and not Tom Evans who was an official with the Republican National Committee.

Mr. ALTSHULER. Tab No. 13, by memorandum dated December 18, 1970. Charles Colson complained to Murray Chotiner regarding the behavior of AMPI lawyers Harrison and Hillings. Colson stated that they had so muddled up the present dairy import situation that he almost felt there was no way to help them. He also stated that they had refused to help recently in a matter of great importance.

Mr. DOAR. We do not know what Mr. Colson is referring to when he says that they refused to help recently in a matter of great importance, and we really do not know either the details of this dispute between the lawyers and Mr. Colson. It is just set forth in the memorandum from Colson to Chotiner, who was then working at the White House. In 13.1—

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Murray Chotiner, who is now deceased, testified before the grand jury here in Washington, I believe. I am not sure in what case or cases. Do we have his grand jury testimony?

Mr. DOAR. No, we do not.

Mr. McCLODY. Did we request it?

Mr. DOAR. Mr. Garrison has advised me that Mr. Chotiner testified before the grand jury in New York which was investigating the VESCO matter. I really did not know that he had testified before any of the other grand juries. We will inquire into that. The Special Prosecutor has not made available to us any grand jury testimony with respect to his investigation of illegal contributions.

Mr. McCLODY. Well, let me state that it has been reported to me that Murray Chotiner's grand jury testimony, and I am not sure in what case, is quite significant for us to consider in connection with this overall impeachment inquiry. And I would request that we endeavor to get it.

Mr. DOAR. If I could just, Mr. Chairman, speaking of grand jury testimony, you asked me this morning to circulate a letter that you got from Judge Gesell yesterday.

The CHAIRMAN. Yes I advised that it be distributed, and I am sure that it is on the desk of each of the members.

Mr. DOAR. And it reflects a process by which we are getting grand jury material in this case, but we will proceed to try to get that under this same kind of a system.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. On the Hillings letter of 12.1, the last paragraph at the bottom of the page, and going to the next page, it says:

The problem is this, the dairy industry cannot understand why these recommendations were not implemented very quickly. The longest the Democrats ever took to implement a Tariff Commission dairy recommendation was 16 days. On one occasion President Johnson imposed quotas before we received the Tariff Commission recommendations.

How long did it take Nixon to do it?

Mr. DOAR. Well, I do not know; 7 or 8 months, I think.

Mr. HOGAN. Thank you.

Mr. DOAR. It was imposed on December 31, and the recommendation was on September 21. It was done on December 31, and it was done at a level less than that which was recommended by the Tariff Commission.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, on 13.1, Charles Colson's memorandum, there is a reference in paragraph 2 where Colson is talking about these two attorneys, and it says, "Frankly, in view of the relationship of the dairy industry that is involved, I think that these guys are simply too dangerous to deal with." Do you know what he is talking about there?

Mr. DOAR. No, we do not.

Mr. WALDIE. The staff is going to meet with Colson, are you not, according to the news reports?

Mr. DOAR. Yes.

Mr. WALDIE. Will these be subjects for questioning?

Mr. DOAR. Yes.

Mr. WALDIE. Thank you, Mr. Chairman.

Mr. DOAR. Paragraph 14.

Mr. GARRISON. With respect to the Tariff Commission question, the Tariff Commission actually recommended that the import quotas for three commodities be eliminated altogether. And rather than following that recommendation, which of course was of great advantage for the producers, the President actually reduced quotas for those commodities.

Mr. DOAR. Tab No. 14, in connection with tab No. 14 I think the members of the committee ought to note what Mr. Garrison has said specifically on the tab, that as an addition to what Mr. Altshuler will read to you right now.

Mr. ALTSHULER. Tab No. 14, on December 31, 1970, the President signed a proclamation lowering import quotas on certain chocolate and other dairy products.

Mr. DOAR. Again, to emphasize the point, this was less favorable to the dairy industry than what was recommended by the Tariff Commission.

That completes the first book, Mr. Chairman. We can deliver the second book here, and we will still be able to make this deadline if we go along at this pace.

Mr. OWENS. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Owens.

•Mr. OWENS. What is the significance of bringing Murray Chotiner in? Is there any indication that he had been involved before with the dairy people, or will we get into that? Why did he write the memo complaining to Chotiner?

Mr. DOAR. I do not know what the significance is. Later on he left the White House and became a representative of the AMPI.

Mr. OWENS. Had he been instrumental in getting them together earlier? There is no indication of that.

Mr. DOAR. Mr. Kalmbach talked to him, among other people in the White House, during this period, but that is all we know about it.

Mr. LATTA. Mr. Doar?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Doar?

Mr. DOAR. Yes, sir.

Mr. LATTA. You made the comment that the President's proclamation of December 31, 1970, was less favorable to the dairy industry than the Tariff Commission recommendation.

Now, what was the Tariff Commission recommendation?

Mr. DOAR. As Mr. Garrison has said, to eliminate quotas entirely on three products.

Mr. GARRISON. The recommendations, I believe, addressed themselves to four commodities, and the Tariff Commission recommended that the import quota be eliminated altogether with respect to three commodities, so that there could be no imports. And the President as to those three commodities, allowed some imports to take place, but reduced the quotas.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Is it my understanding that when we get to this tape that we will listen to it completely, and ignore the quorum call that might intervene?

The CHAIRMAN. Yes. I would suggest we do that, so we listen to the tape uninterrupted, and since we are going to have general debate on the floor there would not be any reason to have to go to the floor except for the members who want to report for the quorum call.

Incidentally, I would like to call to the members attention the fact that I distributed copies of the letter from Judge Gesell for your attention, and for your studies, so that you recognize what the committee staff is consistently confronted with in trying to secure evidence. And the judge in this case has pointed out that unless we adhere to rules of confidentiality, there would not be any release of these materials to us. I think the members ought to be aware of this.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. May I inquire how many paragraphs we have, or approximately how many minutes of listening time we have on the subject so that one could judge whether we might be running into the evening or what our schedule might be today?

Mr. DOAR. We have 42 paragraphs, and there is a short one, one side of a telephone conversation between the President and Mr. Connally, and there is this meeting with officials of the AMPI and others, which last about 1 hour, and then there is a half-hour meeting. I would say we should finish by 5 or by 5:15.

Mr. KASTENMEIER. Thank you.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Could you give us any idea as to what the workweek will be?

The CHAIRMAN. The Chair at the present time, unless there is any need to meet on Friday, proposes not to meet on Friday, but proposes to go through Thursday as late as we can to finish with the agenda that we have scheduled for this week. And that is this item, the dairy industries, and then we have some matters relating to domestic surveillance which I think we will get into tomorrow.

Mr. MCCLORY. Mr. Chairman, you indicated yesterday that there might be a meeting of the committee, but you are indicating now that that meeting will not take place Friday. Could you tell us when, when you do propose the next meeting of the committee then?

The CHAIRMAN. Well, we have some other items that are coming up, such as the subject of IRS, and I thought that it probably would serve our purposes if after the recommendations from counsel as to whether or not there is a need to consider requests for any further subpoenas on the part of the committee insofar as ITT is concerned, and possibly the dairy industry—I do not know there—but IRS also, contemplated is the possibility for the need for requesting the issuance of further requests and subpoenas, and that we would not have a meeting until that time. And I think that the IRS meeting would not be scheduled until some time next Wednesday.

Mr. DOAR. Wednesday, yes.

Mr. MCCLORY. So you would not contemplate a meeting until after that?

The CHAIRMAN. That is correct. It would seem to me that otherwise our meetings, any meetings we would have, frankly, unless we have

some items that we would have to consider urgently. I think would only contemplate the possibility of considering at the present time the question of subpoenas.

Mr. McCLODY. Well, Chairman, there may be an item that we would want to urge you to consider at the meeting, and so I judge that the present estimate then would be for a meeting next Thursday or Friday, a week from tomorrow, or a week from Friday?

The CHAIRMAN. That is correct.

Mr. McCLODY. Well, we do have reasonable assurance that we will have a meeting on either one of those days?

The CHAIRMAN. Oh, yes.

Mr. McCLODY. And we will have an opportunity to confer with you as far as the agenda items?

The CHAIRMAN. That is correct.

Mr. McCLODY. In which the minority will be very interested.

The CHAIRMAN. So long as it is in keeping with the inquiry, the impeachment inquiry.

Mr. McCLODY. It will be relevant to the impeachment inquiry. Mr. Chairman.

Mr. HOGAN. Mr. Chairman, can we assume that next week we will hear evidence on Tuesday, Wednesday, and Thursday?

The CHAIRMAN. Yes, I believe so.

Mr. HOGAN. Then can we assume that we probably would have a business meeting on Friday rather than on Thursday?

The CHAIRMAN. Well, were we able to speed things up, we might even have it on Thursday, but otherwise we would have it Friday. We intend to have a business meeting at that time. Mr. Doar.

Mr. DOAR. Paragraph 15.

Mr. ALTSHTLER. Tab 15, in January 1971, AMPI began making payments of \$2,500 per month to the Washington, D.C., public relations firm of Wagner & Baroody. The January 1971 payments totaled \$10,000, and were in response to statements from Wagner & Baroody, dated December 31, 1970, for counseling and public relation services in October, November, and December 1970 and January 1971.

AMPI General Manager, Nelson, has testified that Wagner Baroody was retained by AMPI after repeated requests from Colson to AMPI lawyer, Harrison; that shortly prior to AMPI's agreeing to retain Wagner & Baroody, AMPI and Harrison had refused to retain the firm; that AMPI decided it had better hire the firm because Colson had requested it, and because AMPI was afraid that it would lose favor or its efforts would be impeded if it did not; that AMPI considered the payments to Wagner & Baroody in the nature of contributions, and that Nelson was unaware of any activities undertaken by Wagner & Baroody on behalf of AMPI, and knew of no AMPI employee who had ever met with or talked to anybody from the firm.

AMPI monthly payments to Wagner & Baroody continued from January 1971 through January 1972.

Mr. DOAR. Tab 15.4 is Mr. Baroody's affidavit. He said it was his understanding that his firm was expected to look for ways in which we "could advance the interests of AMPI. At no time, however, was I—or was any other person in the firm—connected in any way with, or aware of any discussion between the representatives of AMPI and

the administration concerning either milk price supports or possible contributions to the 1972 Presidential campaign fund."

At other places Mr. Baroody has testified that no member, no employee, of AMPI ever met with or talked with anybody from the firm. And Mr. Nelson——

Mr. BUTLER. Where are you reading?

Mr. DOAR. Nelson testimony at 15.2 on page 126. Mr. Weitz asked, Mr. Weitz asked Mr. Nelson:

To your knowledge, did any employee at AMPI ever meet with or talk to anybody at the Baroody firm?

Answer. Not to my knowledge.

Question. What do they do for their fee?

Answer. Nothing to my knowledge.

Mr. Weitz, the counsel, said, "Nothing to your knowledge?" And Mr. Nelson said, "I have said that repeatedly, nothing that I know of." Tab 16.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, you said they considered these payments in the nature of a contribution, but were they made with contributable funds, or were they made with corporate funds?

Mr. DOAR. They were made with corporate funds. They were not reported.

Mr. OWENS. And it was not reported, but they were also not contributable funds, not legally contributable?

Mr. DOAR. Not legally contributable funds.

Mr. ALTSHULER. Tab 16, prior to February 1971, Haldeman directed Kalmbach to begin raising early money for the 1970 Presidential campaign. In early February 1971, Haldeman gave Colson permission to proceed with finding an outside man for handling funds from certain groups that Kalmbach did not want to be involved with.

In a February 2, 1971, memorandum, Haldeman told Colson to contact Republican Party chairman, Bob Dole, regarding complaints that the milk producers were unable to work out the means of getting their activities going regarding their support.

On February 8, 1971, Colson sent a memorandum to Haldeman saying that the problem involved a person who handles outside support, that Haldeman and Kalmbach had been working on the problem, and that it was terribly important that Colson and people at the White House not be personally involved.

In or before March 1971, Kalmbach, with Haldeman's approval, began to assist in the establishment of a Finance Committee to Re-elect the President.

Mr. DOAR. Tab 16.2 is the only memo from Colson to Haldeman, and 16.3 and 16.4 are additional memos, one from Mr. Haldeman to Colson, and one from Colson back to Haldeman. And then in the second paragraph you see where Colson says: "I feel that it is terribly important that I not be personally involved—no one here should be."

Tab 16.5 is Mr. Kalmbach's letter to the Assistant United States Attorney, Mr. Silbert, and on page 4 of that letter, Mr. Kalmbach sets forth his arrangement with respect to what he did after the

1970 election. And you note he refers there to "with Bob Haldeman's approval," he recruited Hugh Sloan out of the White House and began to set up the finance office at 1701 Pennsylvania Avenue.

Mr. BUTLER. What page is this on?

Mr. DOAR. Page No. 4 of tab 16.5. Tab No. 17.

Mr. ALTSHULER. Tab No. 17, on February 2, 1971. Colson sent a memorandum to Haldeman's assistant, Lawrence Higby, stating that the milk producers were prepared to contribute \$100,000 for tables at a Republican dinner, and that the only trick would be to be certain that the White House got credit for this against the sums it was expected to raise. Higby noted on the memorandum, "OK".

Mr. DOAR. Tab No. 18.

Mr. ALTSHULER. Tab No. 18, between February 2, 1971, and February 16, 1971. Haldeman, Ehrlichman, Colson, and other White House officials approved plans for the President to meet with dairy industry leaders. In a memorandum approving the proposal for the meeting, Colson stated that the President said he wanted to do this and should.

Mr. MEZVINSKY. I want to get something clear here. When we say dairy industry leaders, and then we see AMPI throughout the beginning part of the book, and this book, do we have any communication, any memos, any contact with other co-ops that ultimately got into the picture? Here we are focusing on AMPI. Do we have anything on other co-ops? The reason I raise it, is here we say dairy industry, and ultimately we see other co-ops coming into the picture. Do we have anything preceding this concerning the others?

Mr. DOAR. I do not know that we have anything preceding this, but as I understand it, there were two other major co-ops, and then there is the Land-O-Lakes Cooperative also that was the fourth co-operative, and as we move along, we see the three co-ops joining together with respect to contributions, and also with respect to exerting political pressure in connection with the congressional action on the price supports.

Mr. MEZVINSKY. But we do not see anything about a contact with the public relations firm, the monthly payout by any other co-op, is that right?

Mr. DOAR. That is correct.

Mr. MEZVINSKY. As far as the information we have?

Mr. DOAR. As far as the information we have, Paragraph 18. Oh, I wanted to refer you to tab No. 18.3, which is a schedule proposal from David Parker to Mr. Chapin, who is the President's—or scheduled appointments with the President ahead of time. And if you look at the original there it reflects that with respect to the Presidential participation, Mr. Haldeman's initials appear three times in the middle of the page approving the participation, and approving the coverage and the photo opportunity.

And the second page of that memorandum is Mr. Chotiner's comment with respect to why this meeting would be a good one to have, or why he recommended, and first at the bottom, you see at the bottom of page 1 there is a recommendation, and you see that Mr. Colson and Mr. Ehrlichman, Mr. Chotiner, and Secretary Hardin, and John Whitaker were in favor of it. And on the top of the page Mr. Chotiner says, "Substantial support coming from this group."

Mr. COHEN. As I recall that September 9 telephone conversation, or the conversation of the preceding September, the President had a conversation with Hardin, and then the memo indicated that Hardin—this is a memo from Colson—the memo indicated that Hardin had specifically been authorized to announce on behalf of the President that they would not support the subsidy for the milk school lunch program. Have you got any verification that that came about in that conversation between the President and Hardin?

Mr. ALTSHULER. Congressman, Hardin announced at the convention, Hardin spoke to the convention.

Mr. COHEN. I understand that. But, it also indicated in Colson's memorandum that Mr. Hardin announced, "On your behalf," the administration's support of the milk lunch program which previously they had opposed. Is that the conversation that took place back in September?

Mr. ALTSHULER. I am not sure, Congressman.

Mr. DOAR. Paragraph 19.

Mr. ALTSHULER. Tab 19, beginning in early 1971, dairy cooperative representatives undertook intense lobbying efforts in Congress to enact legislation requiring a milk price support level of between 85 percent and 90 percent of parity. On February 10, 1971, Speaker Carl Albert, Congressman Wilbur Mills, and Ranking House Ways and Means Committee Member John Byrnes, met in Speaker Albert's office with AMPI officials Harold Nelson and Dave Parr, USDA congressional liaison, William Galbraith, and Counsel to the President for Congressional Relations, Clerk MacGregor.

On March 4, 1971, Congressman Mills telephoned OMB Director George Shultz, and on March 10, 1971, Speaker Albert telephoned Shultz to urge an increase in milk price supports.

During late February and March, 88 Members of Congress wrote or wired the Department of Agriculture urging an increase in milk price supports to 90 percent of parity; 10 other Members sought an increase to at least 85 percent of parity, while 44 Members forwarded constituent requests which sought increases to various levels.

Between March 16 and 25, 1971, approximately 28 bills were introduced in the House of Representatives, and two in the Senate to increase the minimum level of milk price support to at least 85 percent of parity.

Mr. DOAR. Tab No. 20.

Mr. ALTSHULER. Tab No. 20. On or about March 3, 1971—

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I would like to ask counsel the source of this figure that 28 bills were introduced in the House of Representatives and two in the Senate to at least 85 percent of parity. I thought that figure was much higher.

Mr. DOAR. That comes from the President's "white paper", which Mr. Starek has verified.

Mr. MAYNE. Well, what about the figure of 125 Members of the House and 29 Members of the Senate having introduced such legislation? I had heard that previously.

Mr. GARRISON. Congressman, the explanation for that was that

there were 28 bills introduced in the House, but those bills had a total of 118 sponsors and cosponsors. Apparently the White House in arriving at its figures lists more cosponsors of identical bills on more than one occasion, so that a Congressman who introduced three bills identically was listed three times. Our figure of 118—

The CHAIRMAN. The white paper here indicates that 125 members of the House introduced or cosponsored legislation.

Mr. GARRISON. But our figure is 118 for the same number of bills.

Mr. MAYNE. Well, it would seem to me, Mr. Chairman, that just to have the bare fact that 28 bills were introduced does not give an accurate picture of the extent of congressional participation in this effort, and that the statement should include the number of Members who did introduce or sponsor such bills, both in the House and in the Senate. And I would like to ask that that addition be made by the staff.

The CHAIRMAN. I think you will find this in the white paper though, which no one I am sure disputes, that 125 Members introduced or cosponsored legislation to support this. That is not in dispute.

Mr. MAYNE. Well, apparently, counsel has just said it should only be 118. I thought counsel disputed it, and I think it is a sufficiently important matter so it should not be just summarized as 28 bills. It is an important enough matter so it should be in the tab statement of information.

Mr. DOAR. We will see that that is added.

Mr. MAYNE. Thank you.

Mr. SEIBERLING. Well, Mr. Chairman, while we are on that subject—

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I understand that some of these bills were introduced after the President acted, is that correct?

Mr. DOAR. No, they were introduced before the President acted on the 25th. Some of the cosponsors may not have been on the bills before the 25th, but—

Mr. SEIBERLING. Well, it seems to me that is also relevant, so if we are going to lay the whole thing out, I think that we ought to show how many introduced it prior to the time of the President's action, because what happened afterward does not seem to have as much bearing.

Mr. DOAR. We will try to get the information as accurately as we can.

Mr. SEIBERLING. Thank you.

Mr. GARRISON. Can I make one further comment? The 28 listed in the paragraph were introduced within the time period specified. In the Senate some cosponsors were added to the Senate bills after the 25th of March.

Mr. SEIBERLING. Thank you.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. One question, Mr. Garrison. The 118: is that total for Members of the House and Members of the Senate?

Mr. GARRISON. No, sir. That is 118 Members of the House, and there were 29 Senators.

Mr. MARAZITI. Thank you.

Mr. GARRISON. Who either sponsored or cosponsored two bills.

Mr. DOAR. Tab No. 20.

Mr. ALTSHULER. Tab No. 20, on or about March 3, 1971, the Department of Agriculture concluded that an increase in milk price supports above the then current level of \$4.66 per hundred weight, approximately 79 percent of parity, was not economically justified to assure an adequate supply of milk.

Between March 3, 1971, and March 12, 1971, the President, Ehrlichman, Ehrlichman's Assistant for Agriculture Matters, John Whitaker, Counsel to the President for Congressional Relations, Clark MacGregor, Office of Management and Budget Director George Shultz, and other White House, OMB and Council of Economic Advisers officials discussed the Department of Agriculture decision.

On March 10, 1971, Colson sent Ehrlichman a memorandum stating that because of the obvious political support they had discussed, affirmative action should be taken on certain cheese imports in order to counteract the effect of the parity level announcement.

Mr. DOAR. The material behind this tab reflects discussion and the consideration being given to the question of whether or not to increase the price support level. You will notice that there is a memorandum at 20.1 from Mr. Seever to Mr. McCracken stating at the bottom of page 1 that there is no economic case for raising the support in 1971.

And then if you go through these memorandums you see the discussion both ways. You see the memorandum in 20.3 from Mr. MacGregor with respect to the dairy problems, and references to appeals by Congressman Mills to raise the price support level to 85 percent.

And then further on, Mr. Rice's memorandum, 20.4, recommending no price support. And Mr. Whitaker was Mr. Ehrlichman's assistant recommending that they stick with the present price support.

And Mr. Colson's memo at 20.6 which recommends that they do something, something be done with respect to some of the problems relating to the findings and recommendations of the Tariff Commission.

Mr. RANGEL. Mr. Chairman, at that point—

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Would you explain the second page of 20.6?

Mr. DOAR. Well, it is just as this came from the White House. And all we had on that page was this little note: "Mr. Ehrlichman would like you to look at this and then talk with him about it." And the "C" is Mr. Colson. There is an attachment to the memo.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Just on that point, Mr. Doar, does it not appear on the second page as though something has been blocked out, and it is not just a blank piece of paper that we have a xerox of?

Mr. DOAR. This is the way the document came from the White House. I do not know whether this first part is just a little tab on the back of this memo, and the rest is just xerox marks on the sheet, or whether this is an entire page of the same size as the first page. There is a stamp at the bottom, "WH" which is—well, this page came entirely like this. But, again, I still do not know whether the attachment was a full page, or whether these are xerox marks on a page that the paper was laid on to photostat.

Mr. RANGEL. Mr. Chairman?

Ms. HOLTZMAN. Thank you.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. It has been pointed out to me by Ms. Jordan that there is a different date on the second page of March 11 as opposed to March 10 on the first page.

The CHAIRMAN. It is over Colson's initial.

Mr. DOAR. I do not know the answer to that, except maybe that it just was—he reviewed it the next day.

Mr. RANGEL. Could you check the materials that came from the White House, because it is obvious that this should not be the same document, the one that is dated March 10, and then ends up on March 11. It is one memo?

Mr. SEIBERLING. Well, it says attachment.

Mr. DOAR. The March 10 and the March 11 date were on the material when it came from the White House, and it just looked to me like Mr. Colson wrote a memorandum to Mr. Ehrlichman on the 10th and Mr. Ehrlichman looked at it on the 10th, and made a note on it, and he wrote something to somebody, that I would like you to look at this and talk to him about it. And why the "C" is there I do not know, and it may be Mr. Ehrlichman did not get to review it until the next evening, on the 11th.

Mr. RANGEL. Would you try to check that?

The CHAIRMAN. Why don't we inquire further to see whether we can?

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. You might just point out that the sequence numbering, is that the White House sequence numbering, the 1301—

Mr. DOAR. No, those are ours.

Mr. OWENS. I see. This item actually preceded the Colson memorandum. Therefore, that could have been sent the following day with a note attached, a cover note in essence, for the Colson memorandum? It is signed by Colson, is it not?

Mr. DOAR. I do not think that you can make that inference. When the material came to us from the White House, it came just packaged up, and without trying to do anything at all with it we numbered it sequentially. And the memo, the attachment was on top of the memorandum, and that is why we gave it a number ahead.

Mr. OWENS. So, they are in reverse order here?

Mr. DOAR. We reversed it because it appeared to us that the attachment was a reaction to the memo and followed the memo in order chronologically. Mr. Garrison had a comment on 20.4.

Mr. GARRISON. Tab 20.2. This is a memorandum from David Rice to Mr. Shultz and Mr. Ehrlichman. On page 2 of that memorandum, the last line, it purports to characterize Congressman Quie's position with respect to the price support level. I refer you in relation to that to the material at 20.3, which is Clark MacGregor's memorandum to Ehrlichman, and shows where he disputes that as an accurate representation of Congressman Quie's position.

On page 4, at 20.2, the Rice memo, at the top of the page I point out the paragraph referring to Hyde Murray. Hyde Murray was and is

the minority counsel to the House Agriculture Committee, and his statement appears to be that it is his judgment that the chairman and ranking member of the Agriculture Committee are in favor of holding the price support level as is. We have no evidence, no clear evidence that the chairman and the ranking member of the Agriculture Committee ever changed their position thereafter on that subject.

And finally, in the same paragraph, Clarence Palmby believes strongly that it would satisfy Wilbur Mills. Mr. MacGregor at 20.3, the second paragraph of Mr. MacGregor's memo, he disputes Mr. Rice's characterization of Wilbur Mills' attitude.

Mr. DOAR. Tab 21.

Mr. ALTSHULER. Tab 21, on March 12, 1971, Secretary of Agriculture Hardin, finding that the price support level of \$4.66 per hundred-weight would assure an adequate supply and otherwise fully meet the applicable statutory criteria, set the milk price support level for the marketing year April 1, 1971–March 31, 1972, at \$4.66—approximately 79 percent of parity. In the same press release announcing the price support decision, the Department of Agriculture noted that the President had ordered the Tariff Commission to conduct an immediate investigation on restricting cheese imports and it announced purchase of cheese for the USDA food program. According to a memorandum by Whitaker, the President approved this announcement on March 12, 1971, on the recommendation of Hardin, Shultz, Ehrlichman, and Special Assistant to the President for International Economic Affairs Peter Peterson.

Mr. DOAR. Paragraph 22.

Mr. ALTSHULER. Tab 22, from early March 1971 through March 25, 1971, dairy cooperative attorneys and representatives contacted administration officials to urge that the President increase milk price supports above the level set by Secretary Hardin. Murray Chofiner, who resigned as Special Counsel to the President on March 4, 1971, and was retained by AMPI shortly thereafter, spoke with John Ehrlichman, John Whitaker, Charles Colson, and Colson's assistant Henry Cashen to urge that the milk price support level be increased. Jake Jacobsen, another AMPI attorney, met with Secretary of the Treasury Connally, Bob Lilly, the secretary of AMPI's political trust has testified that in March 1971, Secretary Connally told him that an increase in milk price supports was "in the bag." Connally has denied making this statement or meeting with AMPI officials between March 12, 1971, and March 25, 1971.

Mr. DOAR. This is an alleged meeting that took place out at the Washington Airport. The members of the committee will probably want to look at this testimony in full. Mr. Lilly's testimony is at 22.8, Mr. Connally's logs are at 22.12 and Mr. Connally's testimony is at 22.7.

The other members of the AMPI organization who were at the airport did not hear the conversation but did support Mr. Lilly as being present and having the conversation at the airport. There is a dispute as to the date. Some of the AMPI's people say the date was the 5th of March, others say the date was the 19th of March. Paragraph 23.

Mr. OWENS. Mr. Chairman, could I ask one question?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. What about Mr. Jacobsen's testimony now that he is apparently changing? Is he not changing his testimony now?

Mr. DOAR. Not that we are aware of.

Mr. OWENS. Based on newspaper stories, I was under the impression that he was. But he is not?

Mr. DOAR. We will check that.

Mr. ALTSHULER. Tab 23, on March 17, 1971, Colson sent a memorandum to Haldeman's aide, Gordon Strachan, attaching memoranda from Colson's file regarding the milk producers political contributions, and saying, this is now in your department.

On March 18, 1971, Dean sent to Kalmbach and other Presidential campaign fund raisers a draft charter for a political committee to serve as a model to be used in connection with the Milk Producers Association. Haldeman has testified that on an uncertain date, he had a conversation with Connally regarding the establishment of mechanics for receiving milk producer contributions.

Mr. DOAR. Paragraph 24.

Mr. ALTSHULER. Tab 24, on March 19, 1971, Ehrlichman, Shultz, Whitaker, Cashen, and other White House aides met in Ehrlichman's office with Campbell and Hardin and discussed the milk price support issue.

Mr. DOAR. The logs and the other memoranda behind this tab reflect that meeting. Tab 25.

Mr. ALTSHULER. Tab 25, on March 19, 1971, Connally met with AMPI lawyer Jake Jacobsen. On March 20, 1971, and March 22, 1971, Connally and the President had telephone conversations.

Mr. DOAR. These are reflected from the logs of Mr. Connally at 25.2.

Mr. MEZVINSKY. Mr. Chairman, I notice on tab 22, we have Connally denying or making a statement of meeting with officials and up through March 25, 1971. Then we come to tab 25. We have the—March 22, I guess, Jake Jacobsen is not an AMPI official, is that it?

Mr. DOAR. Yes; he did not deny meeting with Mr. Jacobsen. Mr. Jacobsen is a lawyer for the AMPI, not an official.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. The meeting between Mr. Connally and the President on tab 25, where did that take place?

Mr. DOAR. It is a phone conversation.

Mr. RANGEL. I see. Thank you. Was that transcribed?

Mr. DOAR. This was the very beginning of the tape recording system, and it was only set up to record one end of the conversations and was only set up at the Oval Office. In just a minute or two, we will play one end of a conversation between the President and Mr. Connally.

Mr. RANGEL. Thank you.

Mr. ALTSHULER. Tab 26, following the Secretary of Agriculture's announcement that the milk price support level would be maintained at \$4.66 per hundred weight, dairy cooperative leaders determined to cancel the plans they had made in February 1971 to contribute between \$80,000 and \$100,000 for tables at a Republican dinner scheduled for March 24, 1971. Prior to March 22, 1971, dairy co-

operatives did not purchase tickets to the dinner. On March 22, 1971, AMPI Treasurer Bob Lilly drew checks totaling \$10,000 for tickets to the dinner. Lilly has testified that this was the usual amount that would normally have been contributed.

Mr. DOAR. Paragraph 27.

Mr. ALTSHULER. Paragraph 27, on March 22, 1971, Whitaker sent the President a memorandum for the President's meeting with AMPI officials scheduled for the following day. The memorandum stated that the dairy lobby had become very strong and lately had decided, like organized labor, to spend a lot of political money.

The memorandum also stated that Ehrlichman, Shultz, Cashen, Assistant OMB Director Rice, and other White House officials had met with Hardin and Undersecretary of Agriculture Campbell on the problem on March 19, 1971, and recommended that the President hold the line, listen to the dairymen's arguments, and await developments on the bill in the next 2 weeks to see if the Democrats could move on the bill.

Mr. DOAR. John Whitaker's memorandum is at page 27.1 and reference to the recommendations of Mr. Ehrlichman, Shultz, Rice, Cashen, and Whitaker, Hardin, and Campbell, are on page 2 at the third paragraph of that page.

Mr. COHEN. Which bill is being referred to in paragraph, tab 27?

Mr. DOAR. We think the gentlemen were talking about a bill that was going to be introduced by Speaker Albert. Paragraph 28.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. You are referring to a bill that would either make 85 percent of parity or 90 percent of parity mandatory, are you not?

Mr. DOAR. Yes, we are.

Mr. MAYNE. And that would leave no discretion whatever to the President—that is, referring to these bills which are listed, at least their authors are listed—under tab 19.

Mr. DOAR. The present law, existing law, left it to the Secretary of Agriculture to determine parity between 75 and 85 percent. You are correct that this bill would have locked the Secretary of Agriculture in at 90-percent parity.

Mr. MAYNE. Thank you.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I am at tab 19.1. I note the staff has summarized the bill to put the price at 90 percent or more of parity price. That would seem to me to leave discretion. I note the statement on page 17.

Mr. DOAR. There were various bills to that effect, Congressman. I believe Congressman Albert's bill was to put the price at a flat 90 percent.

Mr. BUTLER. A flat 85 percent.

Mr. DOAR. I misspoke. The Secretary of Agriculture had discretion between 75 and 90 and this bill would have fixed it at a flat 85.

Mr. HUNGATE. Yes, 85. It would have raised his floor.

Mr. DOAR. I am not sure that there was any ceiling, either. The floor was the ceiling.

Mr. HUNGATE. The summary at page 14, tab 19.1, says not more than 90 percent or less than 85 percent.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Mr. Doar, do you know whether Speaker Albert's bill was introduced?

Mr. DOAR. It was not.

Mr. MARAZITI. You say you will check it. Is there a copy of the proposed bill?

Mr. GARRISON. This information was apparently derived from reports by the White House congressional liaison people and the Department of Agriculture congressional liaison people. It was in effect just scuttlebutt as to what the nature of the bill would be. And it was not introduced in such a form.

Mr. MARAZITI. Thank you.

Mr. DOAR. Tab 28.

Mr. ALTSHULER. Tab 28, at approximately 10:18 a.m. on the morning of March 23, 1971, Secretary Connally spoke by telephone with the President. According to a memorandum by Whitaker, Connally suggested that the President go along with the dairymen he was scheduled to meet at 10:30 a.m. and announce that he was ready to go to 85 percent of parity—\$4.92.

Mr. MAYNE. Mr. Chairman, we have a moment here while this is being distributed. We have now, since tab 19, had about 10 additional tabs which described the events which were going on during March. Am I correct that tab 19 is the only one thus far that relates at all to the activities of various members of the House and Senate in influencing this situation? Do we have just that one tab which summarizes all of that activity?

Mr. DOAR. That is the only tab, but in the proof behind the tab, there are a number of memorandums summarizing various types of congressional activity.

Mr. MAYNE. I notice that the tab 19.1 does list those Congressmen and Senators who introduced the bills, but have you at any place set forth, identified those who wrote or wired?

Mr. McCLORY. Mr. Chairman, could we defer the questioning until we come back? We have a 3-minute tape.

The CHAIRMAN. Could we defer, Mr. Mayne? We have a 3-minute tape, then we can go on to vote and get back here.

[Whereupon a tape recording of the President's statement during a telephone conversation between the President and John Connally, March 23, 1971, from 10:18 to 10:21, was heard.]

Mr. DOAR. The meeting was on the SST, the vote on the SST.

The CHAIRMAN. Mr. Doar, do we have another tape on this?

Mr. DOAR. Yes, it is 1 hour.

The CHAIRMAN. Right after this, we have a vote on the floor, so let us get back and listen to this tape and then we will recess. [Brief recess.]

Mr. MAYNE. Mr. Chairman, I believe you said I would be able to complete the questions I was asking Mr. Doar.

The CHAIRMAN. Oh, yes.

Mr. MAYNE. Mr. Doar, neither at tab 19 nor anywhere else do I find that you have set out anywhere in the volume the identification of the 98 Members of Congress, in addition to those who introduced bills.

who wrote or wired the Department urging a minimum of 85 or a maximum of 90 percent of parity. Similarly, there is no listing anywhere of the Members who forwarded constituent requests urging that this be done.

Am I correct on that, that that does not appear anywhere in this presentation of fact?

Mr. DOAR. That is correct, but we can make that available to the committee members and will.

Mr. MAYNE. I would respectfully suggest that that should be added to the statement of facts, just as the identification of those who introduced the bills was.

Mr. SEIBERLING. Would the gentleman yield for a question?

Mr. MAYNE. I am happy to yield.

Mr. SEIBERLING. As one who has not received any contributions or put in any bills for milk price supports, I wonder if I could inquire as to how it is relevant as to what the identities are?

Mr. MAYNE. Well, I feel it is relevant to indicate the climate and the background in which any Presidential actions were taken. I think the identities of Members who were urging the President to take precisely the step which he did eventually take, as I believe the evidence will show, is relevant. For example, it makes a difference, it could conceivably make a difference whether it were Speaker Albert or the most freshman Member of the Congress—with apologies to my friends on the panel, the committee, who are freshmen.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, would you turn to—

Mr. MAYNE. Mr. Chairman, I have not completed. I thought this was on this subject. But could I continue?

The CHAIRMAN. I would hope that we would try to—I recognize that I asked the gentleman to withhold his questions, but since Mr. Doar has stated that that material requested is going to be made available and part of the record, I would think that that satisfies the gentleman at the moment.

Mr. MAYNE. But, Mr. Chairman, I had yielded to the gentleman from Ohio. I had not completed what I was going to ask Mr. Doar and would appreciate being able to continue until I have completed. It will just take a couple of minutes, I think.

The CHAIRMAN. Well, the gentleman will complete that phase of it and then we will get on with the tape.

Mr. MAYNE. I want to address this not only to Mr. Doar, but to you, Mr. Chairman.

I note also, and of course, I have discussed this with you, there is not as yet any statement of the political contributions received by the various Congressmen and Senators in these categories who participated in the urging of the raising of parity at this time in these particular ways. I know you have told me that your request to the Clerk of the House for this information has been rejected, but I would like to ask Mr. Doar if he has available to him and is aware of the fact that the Clerk of the House did cooperate this year with the Senate Select Committee on Presidential Campaign Activities and did permit their investigator to inspect and copy and report to

the Senate the amounts of campaign contributions of Members of the House as shown in the affidavit of Mr. Robert J. Costa, dated March of this year; and if so, if the chairman would not agree that certainly our Clerk should not give us the same cooperation and courtesy, at least, that he has given to the Senate committee.

The CHAIRMAN. My understanding is that when the information was made available, the names were blocked out. As I have advised the gentleman already, the Clerk of the House has advised me that that matter is a matter that is strictly within the province of the House and that he would not release any information unless the House would release that information, since he is an agent of the House.

Mr. MAYNE. May I ask the staff and Mr. Doar particularly if he is familiar with this affidavit of Robert J. Costa, in which he sets out not only the amounts, but the names of those receiving the contributions?

Mr. DOAR. Yes, I know we have such a document. My understanding is that it is partial information, and No. 2, it also was obtained by a GAO investigator who was permitted to examine the record.

Mr. MAYNE. I will just close, Mr. Chairman, by advising the members of the committee that at the proper time, I do hope to ask for committee action to require the Clerk of the House to cooperate with the committee by furnishing this relevant information. Thank you.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, may I ask you some questions on tab 28.3?

The CHAIRMAN. Just a minute, Mr. Doar. I think we had better go on with the listening to the tapes. I think if you would—

Mr. WALDIE. Mr. Chairman, this has something to do with the tapes. That is why I want to ask. I wanted to ask before we heard that last telephone conversation, but I did not have a chance to. It involves that telephone conversation.

The CHAIRMAN. All right, Mr. Doar.

Mr. WALDIE. On Mr. John Connally's log, the President's phone call, I cannot make out the time. Was it 10:15?

Mr. DOAR. Yes, it is 10:15.

Mr. WALDIE. And then there was an appointment with somebody, and I cannot make out their names, from 10 o'clock to 11:20, who were those people in his office when the phone call came? Is that Colson?

Mr. DOAR. No, that is not Colson. We have his logs for the day. I believe, and it is not Colson.

We do not have his logs, but we do not believe that is Colson.

Mr. WALDIE. Can you find out who that is?

Mr. DOAR. Yes.

Mr. WALDIE. Then can you tell me on that log further down, there is a phone call from—is that Jake Jacobsen from the milk organization?

Mr. DOAR. Yes, it is.

Mr. WALDIE. Is there a time on that, do you know?

Mr. DOAR. No, we do not know the time on that.

The CHAIRMAN. Mr. Doar.

Mr. DENNIS. May I inquire which file Mr. Doar is referring to, just for my information?

Mr. DOAR. Tab 28.3, in the right-hand column.

The CHAIRMAN. We will proceed with the listening to the tapes now.

[Whereupon, a tape recording of a meeting among the President and dairy representatives, March 23, 1971, from 10:35 to 11:25 a.m., was heard.]

The CHAIRMAN. The committee will now recess to 3:30 p.m.

[Whereupon, at 1:45 p.m., the committee recessed to reconvene at 3:30 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 30. We are now in book 3.

Mr. ALTSHULER. Tab No. 30, on March 23, 1971, from approximately 12:18 p.m. to approximately 1:07 p.m. the President met with Ehrlichman and Shultz in the Oval Office. At an unspecified time on March 23, 1971, the President had a telephone conversation with Colson.

Mr. DOAR. Tab No. 31.

Mr. ALTSHULER. Tab No. 31, on March 23, 1971, from 5:05 to 5:35 p.m. the President met in his Oval Office with Ehrlichman, Connally, Hardin, Whitaker, Shultz, Campbell, and Rice. They discussed changing the milk price support level.

Mr. DOAR. This is a tape. Mr. Chairman?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Before listening to this tape, I would like to call the committee members' attention to one page. At page 42, at the top of page 42, there is a statement that is attributed to the President.

The CHAIRMAN. You are making reference now to what, the transcript?

Mr. DOAR. The transcript. Using the procedures that we have used in transcribing these tapes, it was the best judgment of the staff people that this was the President speaking. One of our consultants has indicated that he believes it was Mr. Shultz that was speaking. We chose to follow the practice of relying on the judgment of the staff people about it. But, we wanted to call this to your attention for each committee member to make up their own mind.

Mr. McCLODY. Where is that?

Mr. DOAR. It's on page 42, and it says: "Well, because Colson is dealing with it—". It is at the top of the page.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Doar, am I right that the staff man that you relied on is the blind fellow that has been useful?

Mr. DOAR. No; the man that said that this was not the President is the blind gentleman.

Mr. RAILSBACK. That is what I meant.

Mr. DOAR. And he has an excellent reputation with respect to having excellent ears. I will have to say, however, that on other times with respect to some of the other matters that he thought he heard

on the tape, no one else could hear, and we did not include them. And in certain instances that they were attributing things to the President that we did not, that we did not include.

Mr. RAILSBACK. Excuse me, is this the President's conversation at the top of page 42?

Mr. DOAR. Yes, it is the President's conversation. So when you come to it, I think you have to, each member will have to decide for himself on that question.

Mr. HOGAN. Mr. Chairman, have we used a voice graph in any way to solve these kinds of questions?

Mr. DOAR. I do not understand.

Mr. HOGAN. Well, Bell Telephone has a system where they get a graph of an individual's modulated voice, and they can identify individuals' voices by this graph.

Mr. DOAR. We discussed that I guess, and was advised that it would not work. It is beyond our capability.

Mr. HOGAN. But it is available as a technology?

Mr. DOAR. I think it is. I think it is.

Mr. COHEN. Mr. Chairman? Mr. Doar, in making this judgment, for the committee members to make a judgment, could you play it through a second time so that we could hear the end a second time as well? It is right at the very end, is it not?

Mr. DOAR. Yes, we will.

Could I add one more thing? It is not the whole sentence that is questionable. It is only the first line up to the dash.

The CHAIRMAN. In other words, what you are stating is that there was some question on the part of the staff as to whether this conversation in toto was attributable to the President?

Mr. SARBANES. No, just the first line.

Mr. DOAR. The first line.

The CHAIRMAN. The first line.

Mr. DOAR. Now, two members, two participants in the meeting, I believe that, recollect that this was the President speaking. But, we wanted to call all of this information to your attention.

Mr. McCLORY. Mr. Chairman, in the tape that we played this morning, just before we recessed, I recognize one of the voices as being unidentified as being my constituent, Avery Vose from Antioch, Ill. He was attending that meeting, and his voice comes out clearly to me. I am familiar with his voice. I marked it in my transcript.

Mr. RANGEL. That is great.

The CHAIRMAN. Will you proceed.

[Playing of a tape of March 23, 1971, from 5:05 to 5:35 p.m., of a meeting among the President, John Ehrlichman, John Connally, Clifford Hardin, John Whitaker, George Shultz, Phil Campbell, and Donald Rice.]

Mr. DOAR. Should we play that last 2 minutes again? OK.

The CHAIRMAN. You do not have the other 2 minutes, do you, the other conversation?

Mr. DOAR. There is no other conversation.

Mr. RANGEL. It says there is a conversation.

Mr. DOAR. Pardon?

Mr. RANGEL. It says, "Can I have 2 minutes with you?" And the President says, "Sure. Sure. Sit down."

Mr. DOAR. We don't have that.

Mr. RANGEL. Have we asked for it?

Mr. DOAR. We have asked for it, yes.

Mr. McCLODY. Where did we receive this tape, from whom?

Mr. DOAR. We received it from the White House.

Mr. RAILSBACK. Voluntarily?

Mr. DOAR. I believe yes.

Mr. RAILSBACK. Gratuitously?

Mr. DOAR. Voluntarily.

Mr. BUTLER. This was all in the possession of Mr. Jaworski, was it not?

Mr. DOAR. Yes.

Mr. BUTLER. So we received access to it because they knew we had access to it elsewhere?

Mr. DOAR. We received access because Mr. St. Clair said the President agreed we could have everything that had been given to Mr. Jaworski.

Mr. BUTLER. Yes, thank you.

Mr. SEIBERLING. Mr. Chairman, I would just like to make an observation here, and that is that this tape requires careful analysis, it seems to me, and it is just one more reason why I hope we can move at an early date to get these transcripts released to the point where we can have access to them without having to go over to the Congressional Hotel, because we are really handicapped in studying them unless we do.

The CHAIRMAN. Well, we are working on that.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. I think in fairness it ought also be said that the tapes were given to Mr. Jaworski voluntarily in the first instance.

Mr. DOAR. Paragraph 32.

Mr. ALTSHULER. Tab 32, on March 23, 1971, from 5:35 to 5:38 p.m., the President met with Connally in the Oval Office. At 5:50 p.m. Ehrlichman met with Colson and at approximately 6 p.m., Colson met with AMPI lawyer Chotiner. During the afternoon or evening of March 23, 1971, Under Secretary of Agriculture Campbell, had a telephone conversation with Nelson.

At some time on March 23, 1971, Connally had a telephone conversation with AMPI lawyer Jacobsen.

Mr. DOAR. Tab 32.3 are interviews that the staff of the Senate select committee had with Murray Chotiner before he died. And they set forth a meeting that Mr. Chotiner had on the evening of the 23d with Mr. Colson.

Paragraph 32.4 relates the testimony of Mr. Hanman, who is one of the representatives of one of the co-ops to the effect that he got a call on that afternoon from Mr. Campbell, the Under Secretary of Agriculture. This is at page 9 of 32.4.

Then the question was: "Were you told or do you have any recollection of what was supposed to have transpired in that telephone conversation?" That was the telephone conversation with Mr. Parr. and Mr. Hanman said, "No. My recollection was the call in effect said we should go to the dinner, we should not boycott the dinner, we should go ahead with the plans as previously made."

Then on the next page, at page 10, he said, Mr. Hanman testified on lines 15 and 16: "No. As I recall the general statement was progress is being made, we should go ahead and go to the dinner."

Mr. DOAR. Tab 33.

Mr. ALTSHULER. Tab 33, during the night of March 23, 1971, AMPI officials flew to Louisville, Ky., the home of Dairymen, Inc., another large milk producers cooperative, and met at about 4 a.m. on March 24, 1971, with Paul Algia, an official of Dairymen, Inc., who had attended the March 23, 1971, morning meeting with the President. They discussed political contributions including the possibility of an immediate contribution to the Republican National Committee for a political dinner to be held that evening. They also discussed loans among their organizations for the purpose of making contributions. During the afternoon of March 24, 1971, a Dairymen, Inc., contribution of \$25,000 was flown to Washington and given to the Republican National Committee dinner fund to buy tables for the dinner.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Is that time correct, at 4 a.m. in the morning?

Mr. DOAR. Yes, it is.

Mr. Nelson and Mr. Parr, who were head of the AMPI fund, and Mr. Lilly, who was a treasurer or controller of the AMPI fund, and Mr. Hanman, who is the head or the general manager of Mid-America, which is the second co-op, were at this meeting and Paul Algia is the general manager of the Dairymen, Inc., co-op, the southeast co-op.

All of these men, I think, except Mr. Lilly, had attended the meeting that morning with the President. After the meeting, Mr. Algia flew to Chicago and late that night, he flew from Chicago to his home in Louisville, getting to Louisville at 4 a.m., in the morning.

When he got there, he found waiting for him at the airport Mr. Lilly, Mr. Nelson, Mr. Parr, and Mr. Hanman. They had flown from Washington in their jet aircraft to meet him for a meeting. The subjects that the participants agreed were discussed at this meeting were two: One was to put up money for the tickets for the Republican National Committee dinner that was to take place that evening, and also, a question of whether it would be possible for either one or another of the two larger co-ops to make a loan to the Dairymen's Co-op, the smaller co-op, to their trust fund, in order that that trust fund could participate in substantial political contributions or a substantial political contribution.

That is the gist of what the men remembered about the meeting.

Mr. LATTI. A question, Mr. Doar.

I noticed you referred to the Republican National Committee dinner. If my memory serves me correctly, these dinners are sponsored by the Republican senatorial committees and the Republican congressional committees and not by the Republican National Committee.

Mr. DOAR. I am sorry, I cannot answer that. I do not know the answer. We will look into that and verify that.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, you said Mr. Algia found these people at the airport. Was this meeting not arranged or were—

Mr. DOAR. He said, if you look at page 32—31—of the meeting at 33.1:

What's your best recollection of the time you arrived in the airport in Louisville that morning?

Three or four o'clock.

Who did you find at the airport waiting for you?

I found Harold Nelson, Dave Parr, Garry Hanman, and Bob Lilly. If they had anybody else there, I don't remember.

He said:

When I got off the plane—you know, I can tell you the thrust of the meeting. I cannot tell you word for word, but I can tell you what the thrust was as far as these four fellows descending on me at that time.

I am reading from page 32, tab 33.1.

Mr. BUTLER. Tab 32 is missing.

Mr. DOAR. He said:

I can't remember it word for word, but I can tell you what the thrust was as far as these four fellows descending on me at that time. That was, you know, I could not imagine why they were down there to meet me at that time. But in the past, I mean, they were night people from the word go as far as meetings and things like that were concerned.

In any event, I asked them to—you know, what on earth did they want?

They said, well, they indicated to me they wanted two or three hundred thousand dollars from us.

I said, well you, or words to this effect, you have got to be kidding. I mean we would not have that kind of money.

Tab 34.

Mr. ALTSHULER. Tab 34, during the night of March 24, 1971, following the Republican National Committee dinner, Chotiner, Kalmbach, and AMPI General Manager Nelson met in Washington, D.C., in Kalmbach's hotel room. Kalmbach has testified that Chotiner said that Ehrlichman had asked Chotiner in view of the price support decision to be announced the next day to reaffirm to Kalmbach the milk producers pledge of \$2 million to the 1972 campaign.

Chotiner has stated that as a result of a conversation with Ehrlichman, he met with Nelson and Kalmbach and discussed contributions, but they did not discuss price supports or a definite amount to be contributed. Nelson has testified that they met and discussed contributions.

Kalmbach has testified that on March 25, 1971, he reported to Ehrlichman that Chotiner and Nelson had reaffirmed their \$2 million pledge to the campaign.

Mr. DOAR. Mr. Kalmbach's testimony on March 22, 1974, before the select committee, is at 34.1. On page 59, he was asked if he met with Mr. Ehrlichman on the day following that evening meeting. He said:

I think that at that meeting—I think it was on the 25th that I told Mr. Ehrlichman that Mr. Chotiner and Mr. Nelson had reaffirmed their \$2 million pledge to the campaign.

Then on page 61, he was asked, Mr. Weitz asked:

Did anything go more to the substance of the relations between, as a personal matter, for example, between the Harrison firm and/or Mr. Harrison personally and Mr. Colson?

Mr. Kalmbach answers:

No. I don't recall that there did. But to me, the main and sole purpose of the meeting was the reaffirmation of the \$2 million pledge and the fact that they

told me that the price support decision was to be announced the next day and that in view of that fact and in view of the fact that Mr. Ehrlichman had asked Mr. Chotiner to make sure that I was informed of this reaffirmation, that they were in fact reaffirming the \$2 million pledge to the campaign.

Paragraph 35.

MR. EDWARDS. Mr. Doar, is not the answer to Mr. Latta's question on the money \$25,000 paid on tab 33.5? It shows that the money was paid to various Republican committees in five or six checks.

MR. DOAR. That is correct, Congressman Edwards. It is 33.5. The money was paid to various campaign committees on the 24th.

MR. SEIBERLING. That is only \$25,000.

MR. DOAR. Paragraph 35.

MR. ALTSHULER. Tab 35, on March 24, 1971, Campbell sent to Rice a draft press release announcing an increase in milk price supports for use when action was completed on the subject.

On March 25, 1971, the Secretary of Agriculture officially announced that the milk price support level for the 1971-72 marketing year would be \$4.93 per hundredweight—approximately 85 percent of parity. Hardin has testified in an affidavit filed in civil litigation challenging the milk price support increase that he reevaluated the evidence regarding the milk price support level and that the decision to set the price support level at \$4.93 was based entirely on a reconsideration of the evidence on the basis of the statutory criteria.

MR. DOAR. Tab 35.3 is Mr. Hardin's affidavit in the case of *Nader v. Butz*. Paragraph 36.

MR. ALTSHULER. Tab 36, between March 30 1971, and August 5, 1971, Harrison and Chotiner transmitted to AMPI the names of 100 political committees to receive contributions and over the spring and summer of 1971, AMPI and the other dairy cooperatives made contributions of \$2,500 each to the committees. The names and charters of the committees were prepared by Presidential campaign fundraisers Bob Bennett and Hugh Sloan with the assistance of John Dean. Haldeman received reports from Dean and Strachan regarding the collection and handling of the milk money.

On September 11, 1971, Strachan sent a memorandum to Haldeman stating that fundraiser Lee Num reported that \$232,500 of milk money had been realized. Strachan stated that this was slightly more than one-half of the amount that should have been realized on the commitment, \$90,000 per month. Throughout this period, dairy cooperative officials referred to the commitment to make contributions to the President's reelection campaign.

MR. DOAR. The first five paragraphs relate to the organization and the transmission of these various campaign committees, so that each committee would receive no more than \$2,500. Paragraph 36.6 are notes of a meeting between Haldeman and Dean on May 18, 1971. This is at 1226. In paragraph 2, they refer to the large expenditures and the activities with the milk money would remain nonreporting. The paragraph on page 1299, Dean asks Haldeman, "What about the milk money? Our current thinking is to keep it totally separate and not even use the same bank.

"H"—That is Haldeman—"agree".

"DEAN. What should the milk money be used for?

"H. The Citizens Committee can submit a budget at the appropriate time and in the meantime, the money can sit in the bank."

At the next page, 1230, Dean says "It is my understanding that the White House is to be completely hands-off the milk money."

Haldeman says "Agree."

And Haldeman says "The milk money can pay for the 1971 activities up to the campaign."

Tab 36.7 is Gordon Strachan's memorandum of May 21, 1971, where he reports that the responsibility—this is at the bottom of page 21—the responsibility for the collection of the milk money should be shifted entirely to Lee Nunn.

Then Paragraph 4 on the next page, which staff has not been able to understand as yet, reads:

Kalmbach and Nunn argue that the milk money currently collected and that which will be received should be banked in the Bennett committee names. It is readily accessible, and any transfer into the committees holding Kalmbach collected money might contaminate them.

Mr. Altshuler has advised me that we have not been able to understand exactly what that means.

On 36.8, we see that there is a memorandum on September 11, the first paragraph, which says:

Lee Nunn reports that \$232,500 has been realized. This is slightly more than one-half of the amount that should have been delivered on the commitment (\$90,000 per month).

The CHAIRMAN. We will have to recess now until we vote.

[Recess.]

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Paragraph 37.

Mr. ALTSHULER. Paragraph 37, in August 1971, Colson asked that AMPI make a contribution to People United for Good Government, a political committee, without specifying the purpose of the contribution.

On September 2, 1971, AMPI contributed \$5,000 to the People United for Good Government. Without the knowledge of AMPI officials, this money was later used to reimburse Joseph Baroody of Wagner & Baroody for funds he had loaned to Colson. The loan had been used to pay expenses incurred by the White House special investigations unit—the Plumbers—in connection with the break-in of the offices of Daniel Ellsberg's psychiatrist.

Mr. DOAR. The firm of Wagner & Baroody was the firm that was receiving \$2,500 a month from the AMPI during the 1971. AMPI officials had testified that they regarded this as a contribution, and this arrangement had been set up by Colson. Why in September or August of that year it was necessary to borrow \$5,000, and then to make another contribution of \$5,000 in order to repay Wagner & Baroody for the loan, we have not been able to establish. But, the money did go into the White House special investigations unit, the Plumbers, in connection with the break-in of Dr. Fielding's office. Tab 38.

Mr. ALTSHULER. Tab 38, on September 3, 1971, the President delivered a speech to the AMPI convention in Chicago, Ill.

Mr. DOAR. Tab. 39.

Mr. ALTSHULER. Tab 39, in mid-September 1971, newspaper articles were published about AMPI's contribution suggesting they influenced the March 1971 milk price support decision. According to reports filed with the Clerk of the House of Representatives, AMPI made no direct contributions to the President's reelection campaign after September 10, 1971.

Mr. DOAR. Tab 40.

Mr. ALTSHULER. Tab 40, on November 22, 1971. Deputy Assistant to the President, John Whitaker, signed a memorandum to the President's file dated that day regarding the President's afternoon meeting of March 23, 1971, on milk price supports. Thereafter the memorandum was redated to March 23, 1971. On July 11, 1973, a file copy of the memorandum dated November 22, 1971, was filed in camera under claim of executive privilege in civil litigation in U.S. District Court challenging the March 1971 price support decision as being unlawfully based on political contribution.

On November 16, 1973, Special Counsel to the President, J. Fred Buzhardt, filed an affidavit informing the court of the fact that the memorandum had been redated. Buzhardt stated in the affidavit that it had been informally ascertained from the originator of the memorandum that the date on the original was apparently changed by persons unknown.

Mr. DOAR. Paragraph 40 should really, should properly be corrected on line 2 to note after the word "Whitaker," the statement of information should read "prepared and signed." This is apparent from Mr. Buzhardt's affidavit that is at 40.4. And if you look at 40.1 you see that this is a memorandum of John Whitaker, one of the persons that was present at the meeting that you listened to this afternoon from 5:05 to 5:38. The date of that memorandum is March 23. It is dated March 23, 1971. It sets forth a summary of that meeting. And at the end of the meeting it says:

After requesting Secretary Hardin to do all in his power to make sure the milk people did not overproduce and ruin their market (the basis for Secretary Hardin's original decision not to raise price supports) you decided to have Secretary Hardin reverse his decision publicly.

Mr. BUTLER. Mr. Chairman?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Do we have the statutory authority under which this increase and the price support was authorized?

Mr. DOAR. Yes. It is in paragraph—

Mr. McCLORY. Did the Secretary of Agriculture act within the scope of the statutory authorization?

Mr. DOAR. Well, I do not—he said he did, but the statute does not provide for any authority from the Secretary of Agriculture to make decisions for political reasons, nor does it give to anyone but the Secretary of Agriculture the authority to make the adjustments. The authority is given to the Secretary of Agriculture, not to the President.

Mr. McCLORY. Yes, but then the Secretary did file a statement, did he not, giving the basis for his decision which was in accordance with the statute?

Mr. DOAR. He filed an affidavit to that effect, yes.

Mr. McCLORY. And it purported to conform to the statute?

Mr. DOAR. That is right. It did. It set forth the reason for doing it was because of economic reasons.

Mr. JENNER. Congressman McClory, your question is the issue in *Nader v. Butz*, and that has not been decided yet.

Mr. McCLORY. That has not been decided yet?

The CHAIRMAN. That is another record vote, and we will have to go and vote and return again.

[Short recess.]

Mr. DOAR. We have not been able to explain why the memorandum dated November 22, prepared and signed on November 22, 1972, was redated, back dated to March 22, March 23, 1972, or what the purpose of that was. But, it is clear from Mr. Buzhardt's affidavit, which if you will look at 40.4, and if you will look at page 2 of that affidavit at 40.4, subparagraph 4(c) at the bottom of the page, Mr. Buzhardt says: "A memorandum dated March 23, 1971 from a Presidential Assistant to the President's file concerning a Presidential meeting with other government officials involving decisionmaking with respect to the dairy price support program. This memorandum, except for the date, is identical to the document previously described in the affidavit of Leonard Garment dated July 5, 1973, at paragraph 3(h). It has been informally ascertained from the originator," and the originator was Whitaker. "of the memorandum that it was originally prepared on November 22, 1971, and so dated, the date on the file copy was apparently later changed by persons unknown to conform to the date of the Presidential meeting described therein." Paragraph 41.

Mr. ALTSHULER. Tab. 41.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Is there any explanation, that a possible sinister force may be responsible?

The CHAIRMAN. Well—

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. I think we'd better move on. Mr. Railsback.

Mr. RAILSBACK. Yes, I will be very brief. Is there any significance to that? I mean, I do not quite understand the significance of the date change or adding the date of whatever.

Mr. DOAR. I think that in and of itself, it is just peculiar, but my understanding is that generally after meetings that the President had, at which key members of the staff attended, that a memorandum was usually dictated by one member of the staff as to what took place at the meeting. Apparently such a memorandum was not dictated after this meeting, and at a later date someone had Mr. Whitaker dictate a memorandum as to what took place at the meeting. He dictated it and signed it in November, and then someone else changed the date back to March and put it in the file. That is all that we know about that particular situation.

Mr. WALDIE. Mr. Chairman, may I ask a question, please?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, do you know if Mr. Whitaker kept notes? Looking at his memorandum, it seems to be a rather precise recollection. Having been that far removed from the date of the meeting, from

March to November, was there any inquiry as to how his recollection may have been stirred to that certainty?

Mr. DOAR. We have not made that inquiry, and I think we should and will.

Mr. WALDIE. I would appreciate that.

Mr. DRINAN. Mr. Chairman? Mr. Chairman? A point of information related to the whole question. The Senate Watergate Committee has issued a report on this whole thing, and it was noted in the press. Is that report yet available to us?

Mr. DOAR. Yes, it is.

Mr. DRINAN. Will we get copies?

Mr. DOAR. Yes.

Mr. DRINAN. Is it printed?

Mr. DOAR. It has not been officially released. It is in a draft form. We have copies of it over at the office.

Mr. DRINAN. Could we have portions of it prepared for us, the relevant portions?

Mr. DOAR. Yes, you could.

Mr. DRINAN. Related to this? How soon will the whole book be out?

Mr. DOAR. It is a 350-page report, and I do not know how soon. I will find that out for you, Father Drinan, and I will advise you.

Mr. DRINAN. I would appreciate it. Thank you.

The CHAIRMAN. Let us move on and defer any questions until we complete the presentation.

Mr. DOAR. Paragraph 41.

Mr. ALTSHTLER. Tab 41, on January 24, 1972, a civil suit was filed in the U.S. District Court for the District of Columbia challenging the March 1971 milk price support increase as unlawfully based on political considerations and campaign contributions. After February 1, 1972, Counsel to the President, John Dean, reported regularly on the litigation to Haldeman and Ehrlichman.

Mr. DOAR. Paragraphs 41.3 through 41.5 are John Dean's memorandums and 41.2 to 41.4 are John Dean's memorandums to Mr. Ehrlichman and Mr. Haldeman with respect to the litigation and advising them of the likelihood that the principles in connection with this decision to raise the dairy supports were apt to be examined, their depositions taken, and that discovery of White House documents or attempt to discover or to inspect and photograph White House documents were likely, and efforts were made during that time by the counsel for the White House to defer that discovery. Tab 42.

Mr. ALTSHTLER. Tab 42, in January and February 1972 Kalmbach and AMPI representatives discussed procedures whereby AMPI could resume making political contributions without the contributions being made public.

In March or early April 1972, following attempts by AMPI to get the Department of Justice to drop an antitrust suit against AMPI, Kalmbach told AMPI representatives that he would not accept additional AMPI contributions.

Mr. DOAR. This information is found mainly in the memoranda, the political matter memoranda from Gordon Strachan which the committee members may want to look at in full, and the January 18 memorandum is at 41.1 or 41.2. The February 1 memorandum is at 42.2, and

the political matters memorandum is at 42.3. The latter two we have already referred to in earlier books. Paragraph 43.

Mr. ALTSHULER. Tab 43, on the list of pre-April 7, 1972, contributions kept by the President's personal secretary, Rose Mary Woods, contributions by the dairy organizations are listed separately under the heading: "House Accounts."

Mr. DOAR. This is shown at 43.1. The three trust funds are listed there with a total amount received at \$232,500. The amounts received apparently between April and September, which is about one-half of what the dairy industry apparently contributed, they had committed \$90,000 per month. Tab 44.

Mr. ALTSHULER. Tab 44, on October 21, 1972, Lee Nunn, who had taken over Kalmbach's responsibilities as a major Presidential campaign fundraiser, met with AMPI general manager, George Mehren, and asked AMPI to make additional substantial contributions to the President's reelection campaign. Nunn has testified that when Mehren stated AMPI could not make additional contributions to Presidential candidates, Nunn suggested that AMPI make a contribution to the Republican congressional campaign. Nunn has testified that he reported to Maurice Stans, chairman of both the Republican National Financial Committee and the Finance Committee to Reelect the President, that AMPI could not contribute to the Presidential campaign but would probably contribute to the congressional campaign, and that Stans told Nunn to contact the two Republican congressional campaign committees and see if they could not make some repayments on loans that had been advanced.

Mr. DOAR. Testimony of Mr. Nunn and Mr. Mehren and Mr. Lilly substantiating the matters of the information set forth in the paragraph are set forth in detail at 44.1 through 44.3. Paragraph 45.

Mr. MEZVINSKY. Mr. Chairman? Mr. Chairman?

Mr. DOAR. we know that there was a recent pleading of guilty by a former Washington representative for what they called Lehigh Valley Cooperative, supposedly a \$50,000 honorarium given to Secretary Butz, and they said that really it was a channel through to the Committee to Reelect the President. That is just recent. Have we at all looked into that in view of the comment that there were no political contributions made after April, and they could not do that, and that we, in fact, we have got a pleading of guilty by a member of a cooperative?

Mr. ALTSHULER. Congressman, we are not aware at this point of any connection between that milk producers cooperative and the others that were involved in the March 1971 price support decision.

Mr. MEZVINSKY. So we do not know whether or not they, in fact, were part of the so-called \$2 million commitment or not, is that right?

Mr. ALTSHULER. No, sir.

Mr. MEZVINSKY. Is there any way to check that out, or has it been checked out, or do you plan to check it out? Because you have got a plea there of guilty by a representative of a cooperative as to a \$50,000 contribution that supposedly was an honorarium.

Mr. DOAR. We will check that, Congressman, and let you know.

Mr. MEZVINSKY. OK. Thank you.

Mr. DOAR. Paragraph 45.

Mr. ALTSHULER. Tab 45, on October 27, 1972, AMPI contributed over \$300,000 to the Republican senatorial and congressional campaign committees. Thereafter \$200,000 was used by the congressional and senatorial campaign committees to repay loans from the Republican National Finance Committee.

On November 7, 1972, and November 13, 1972, \$200,000 was transferred by the Republican National Finance Committee and its subsidiary, the Republican Campaign Committee to the Finance Committee to Reelect the President.

Mr. DOAR. This paragraph of information reflects the movement of the money first to the senatorial, the Republican senatorial and congressional campaign committees, and then back to the Republican Campaign Committee, and then to the Finance Committee to Reelect the President. The \$200,000, and that contribution came after October 1972.

There were two questions that were asked. Congressman Rodino. The statute is at tab No. 21, and the memorandum, Mr. Whitaker's memorandum, there was a memorandum written on March 19, or dated March 19, and that at 24.3. There is a memorandum on March 22, and that is at 27.1. And there is a memorandum of March 25 at 28.4. And then there is the November 22 memorandum at tab 40.1.

Mr. BUTLER. With reference to the memorandum at 28.4, dated March 25, 1971, which is dealing with the same day as the other memorandum as to which the date was changed, I really do not think that it is too significant, but I would like to know was there some indication that this memorandum was redated or not at a later date?

Mr. DOAR. The 25th memorandum?

Mr. BUTLER. The 28.4. That is the one that deals with 10:30 in the morning when he met with dairy industry personnel.

Mr. DOAR. We do not have any indication of that.

Mr. LOTT. Mr. Chairman?

Mr. DOAR. Any proof of that.

Mr. BUTLER. Thank you very much.

Mr. LOTT. I would like to address a couple of questions to counsel if I could. At 42.3 and also 42.1, I have gone over this and I do not see anything that relates in this to the milk subject. Can you point out any particular area in 42.3? I mean, it is all political matters but I do not see where it gets into milk at any place. Does it?

Mr. DOAR. It is at paragraph 4.

Mr. LOTT. All right.

Mr. DOAR. Tab 42.1 is at paragraph 1.

Mr. LOTT. Well, most of these tabs, do you not have a marked area that is of significance?

Mr. DOAR. We do, and we should have done that here.

Mr. LOTT. OK.

Mr. EDWARDS. Mr. Doar, I do not understand tab 43, this special separate list kept by Rose Mary Woods. Did she keep a "House Account" of all contributions?

Mr. DOAR. In every other instance, Rose Mary Woods' list of contributors were by State, as our understanding is, and then she kept this separate and listed under the heading "House Account."

Mr. EDWARDS. And what significance does the term "House Account" have?

Mr. DOAR. Well, we do not know that. We have not been able to determine that yet.

Mr. EDWARDS. Now, these were not accounts that she had any control over?

Mr. DOAR. No, not to our knowledge. No. These moneys went into the 100 separate committees. And if you will see the John Dean reports at 42, or 41, I believe, he indicates that some of the officials of those accounts in those corporations did not know that they were being, their names were being used for the accounts.

Mr. EDWARDS. Who would sign the drafts?

Mr. DOAR. I think the controller over the account of this money was under Mr. Haldeman.

Mr. EDWARDS. Well, where do you suppose Rose Mary Woods would get the information to keep these files?

Mr. DOAR. She got it from Mr. Stans.

Mr. EDWARDS. Would Mr. Stans have control of each one of these hundreds of accounts? Would he sign drafts to take money, to withdraw money?

Mr. DOAR. He prepared the list. I do not believe he had control over the accounts.

Mr. EDWARDS. Thank you.

Mr. DOAR. Congressman, I am really not fully prepared to answer the questions you have asked today, because in connection with this presentation we did not look at this particular aspect of the control of the money after it was received from the dairy industry. But, we can get that information. Other people are working on that aspect of the inquiry.

Mr. EDWARDS. Yes. I believe that Mr. Stans testified that he did not keep the record of contributions made after April 7, 1972, is that correct? That he destroyed them, I believe.

Mr. GARRISON. Congressman, we can give you just a bit about that. Mr. Stans did prepare a list. Mr. Stans prepared a list for Miss Woods to be kept at the White House consisting of major contributors, pre-April 7, for purposes of White House social invitations and so forth.

Mr. EDWARDS. I see. Thank you.

Mr. GARRISON. \$100,000 or more was generally the cutoff point.

Mr. EDWARDS. Do you know why it was called "House Account"?

Mr. GARRISON. No, sir. We know that all of the other contributors, except one, were listed by State. Mr. Vesco was listed under JM, which it has been inferred stood for John Mitchell. But, all other contributors on this list were carried under the name of a State. Now, why this was not carried under the name of a State, one could only infer it was not attributable to any one individual or group of individuals that could be associated with a particular State.

Mr. EDWARDS. Thank you.

Mr. DONOHUE. Mr. Chairman, I would like to inquire, when was AMPI incorporated?

Mr. ALTSHULER. Congressman, there were a number of predecessor organizations in Texas that began forming in the late 1960's. AMPI, the Associated Milk Producers, Inc., was established in late 1969. It was the successor organization to Milk Producers, Inc., which was a smaller Texas cooperative, and the formation of AMPI was really

a merger of many milk cooperatives throughout the Midwest. That took place at the end of 1969.

Mr. DONOHUE. And does the staff have any evidence of contributions made by the predecessors of AMPI?

Mr. ALTSHULER. Yes sir; there were contributions by the predecessor. We do have some record of that. There was initially, of course, the pledge of money to Mr. Kalmbach came at the time that the organization was still Milk Producers, Inc.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

There is a statement here that the Milk Producers or AMPI were not going to contribute any more to Presidential campaigns. Do we know the reason for that, considering that they had paid \$32,000 out of a \$2 million commitment?

Mr. DOAR. The suggestion is, the information is that in connection with the publicity with respect to the contributions that had been made at the time of the increase of the milk support.

Ms. HOLTZMAN. Do we have anything to support the inference?

Mr. DOAR. Well, just the connection in time.

Ms. HOLTZMAN. Have we interviewed some of these milk people or Mr. Kalmbach on that?

Mr. ALTSHULER. The milk people have and still are being interviewed very extensively in executive session by the Senate select committee and we have access to those transcripts.

Ms. HOLTZMAN. Thank you.

The CHAIRMAN. We will recess to meet at 9 o'clock tomorrow morning.

[Whereupon, at 5:55 p.m., the committee recessed to reconvene at 9 a.m. Thursday, June 6, 1974.]

IMPEACHMENT INQUIRY

Executive Session

THURSDAY, JUNE 6, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Michael M. Conway, counsel; E. Lee Dale, counsel; John B. Davidson, counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; John E. Kennahan, counsel; Tom Flaherty, investigator; Muriel Pugh, research assistant; and Elizabeth Dunigan, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

Before I call on Mr. Doar, I would like to make a comment. I hope and trust that it is taken in the light in which it is made.

Regarding the newspapers in the last few days, I note that counsel have made statements regarding the evidence before this committee and the evidence that has been presented in executive session. It would appear to me that it is entirely inappropriate for counsel to make any comments whatsoever. I am not going to impute anything other than to say that the Chair feels very strongly that these remarks are inappropriate. I would hope that this comment from the Chair is heeded, because I believe that otherwise, the committee would have to take the kind of action that I think would be appropriate under the circumstances.

I am not going to go beyond that except to say that I think it is entirely out of order, entirely inappropriate, and therefore, I would hope that from this day forward, we do not read in the newspapers that there are conclusions being reached as to whether or not the

evidence before us is such as to either inculcate or exculpate Mr. Nixon. Mr. Doar?

Mr. DOAR. Mr. Chairman, members of the committee, the material today and next Tuesday will involve a chronological presentation of certain domestic surveillance activity, including wiretapping, the activities of the special investigating unit known as the Plumbers, and other investigating activities carried on by the White House.

At my left is Richard Gill, who is in charge of the task force. Mr. Gill is a practicing attorney from Montgomery, Ala., a graduate of Vanderbilt and the University of Virginia Law School.

Next to him is Michael Conway. He is a graduate of Northwestern and the Yale Law School.

Behind me, at my far left, is Lee Dale, who is a practicing attorney from Denver. A member of the bar of Colorado, a graduate of Westminster and Vanderbilt Law School.

Beside him is a GAO investigator, Tom Flaherty, who has been working for us since we started. He has had 14 years of experience as an accountant investigator for GAO. He has an advanced degree from George Washington University.

Also on our staff and connected with this presentation is Muriel Pugh, who is next to Tom Flaherty. She is a graduate of Radcliffe and is now enrolled at the Georgetown Law School.

Members of the minority staff who are here also, working on this entire task force, are John Kennahan, who is a graduate of Georgetown. He has practiced law in the District of Columbia for 13 years and then was a prosecuting attorney in the city of Alexandria, Va., for 4 years; John Davidson, who is a graduate of Harvard and is a member of the bar of Illinois and practiced in Chicago, Ill., also, Elizabeth Dunigan, who is sitting next to Muriel Pugh. She has a B.A. degree from Trinity College in Washington, D.C.

All of this group worked on this very, very enormous area, which was the first and second areas covered in the six areas that we referred to in our February 6 report. A great deal of material, highly sensitive material, secret and confidential material, had to be processed by these men and women and I think they have done an extraordinary job of distilling and collecting this information for you. Paragraph 1.

Mr. GILL. In early May 1969, following conversations between FBI Director J. Edgar Hoover, Henry Kissinger, and Attorney General John Mitchell, the President authorized a specific wiretapping program in an effort to discover the source of leaks of classified Government material. Under this program, which remained in effect until February 10, 1971, wiretaps were instituted against 13 Government officials and four newsmen.

Mr. DOAR. This is the wiretap program that was instituted by the President. It involved wiretaps of 17 individuals. It started in early May 1969; that is a little over 3 months after President Nixon was inaugurated and took the oath of office in January 1969. If you will refer to President Nixon's statement at 1.3, paragraph 1, President Nixon, in a statement which he made on May 22, 1973, explained the development of the 1969 wiretap program. He indicates that there were a number of highly sensitive foreign policy initiatives being undertaken and these initiatives involved highly secret diplomacy, and that begin-

ning in May of that year, news accounts appeared in the major newspapers across the country, which were in his opinion obviously based on leaks by people who had access to highly classified material.

Then if you will look at the top of the second column, President Nixon said "In order to do this, a special program of wiretaps was instituted in mid-1969 and terminated in February 1971, almost 2 years later. Fewer than 20 taps, of varying duration, were involved." Altogether, there were 17 taps under this program.

The President states: "They produced important leads that made it possible to tighten the security of highly sensitive materials."

It is very difficult to determine exactly what the President is referring to when he says that. But I call that to your attention. You, of course, will have to judge that for yourself. It may be that we have not gotten all the material or we do not understand fully the significance of the material.

The President states unequivocally that he authorized this entire program and that each individual tap was undertaken in accordance with procedures legal at the time and in accord with longstanding precedent.

He indicates that "The persons who were subject to these wiretaps were determined through coordination among the Director of the FBI, my Assistant for National Security Affairs"—that is, Mr. Kissinger—"and the Attorney General"—Mr. Mitchell. "Those wiretapped were selected on the basis of access to the information leaked material in security files, and evidence that developed as the inquiry proceeded." If you will return to 1.1, I want to explain that we received from the FBI, from the Department of Justice, full cooperation with respect to the contents of their files and with respect to these particular wiretaps, with the exception of the material that was in the logs—that is, the overhearings, which really, we did not think was particularly pertinent to the inquiry anyway, inasmuch as pertinent information, in the judgment of the FBI, was summarized in the reports. The Department of Justice was very sensitive to the rights of privacy and the individual rights of persons tapped. Therefore, they requested initially that we, Mr. Jenner and I, screen out the names of the persons contained in the summaries which therefore we agreed to do, subject to the understanding, clearly, that this committee would have the right in meeting its constitutional responsibility to ask and ultimately require the Justice Department to produce all of the material for its own examination if it so desired.

The way we screened out this material was to assign to the particular persons tapped letters—A, B, C, D, E, F, and G, for example—and to leave out other references that would, by so doing, not make the name of the person or persons who were under surveillance known.

This material, after we reviewed it and handled it in this way, was then resubmitted to the Justice Department and to the FBI for their internal examination and approval. They advised Mr. Gill that they were satisfied with the procedure that we have undertaken.

Now, I represent to you that we have done the very best job of taking out no more than we thought was required under the standards of protecting privacy without in any way affecting or screening out information that was pertinent to your inquiry, and also that we did

not leave in any information unnecessarily—that might have been taken out. I think we have done a good job on this, but of course, we may have overlooked something.

Mr. McCLOREY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLOREY. I have not gone through this yet, but did your investigation concern itself with the wiretaps of prior administrations, since the President said, well, this was done according to well-established precedent?

Mr. DOAR. Well, to some limited extent, but not extensively.

Mr. McCLOREY. That is a—I guess that is sort of undisputed, though, is it not, that there were extensive wiretaps under the Johnson administration and under the Kennedy administration?

Mr. DOAR. I do not think that you can say that there were extensive wiretaps. There were taps, of course, wiretaps have come under more and more control through the years.

Mr. McCLOREY. Right.

Mr. DOAR. And there has been wiretapping under an Executive order, and order of the Department of Justice that was initially issued in 1940 in national security cases by direction of the Attorney General. It was not until 1971, in the *Keith* case that that kind of invasion of the fourth amendment was prohibited by court decision.

Mr. McCLOREY. I guess the question or the thing that kind of bothers me is just this: Is there enough information or is there enough factual material relative to wiretaps in the other administrations so that we can make a contrast as to whether or not this was something extraordinary or abusive in contrast to what was done before?

Mr. DOAR. I do not think that there is enough information. I think that this information will reflect, or at least require you to consider whether or not there was abuse. I think that certain manners in which this was conducted, that there will not be any record of any former administration that it was ever carried on like this.

With respect to the persons tapped, we did not examine or compare the criteria or the methods, the duration, of taps in former administrations.

Mr. EDWARDS. Mr. Doar, were these taps not carried on under what was then known as the Mitchell doctrine, where one did not have to go to court to get an order, which was later held unconstitutional or illegal by the courts?

Mr. DOAR. I think these would have to be considered separately from that, because these really were not carried on by the Attorney General under that doctrine. These orders came from the President or from Mr. Kissinger or Mr. Haig, Colonel Haig, or Mr. Haldeman or Mr. Ehrlichman. Mr. Mitchell had certain other taps involving intelligence gathering in the domestic security field; that is, allegations involving groups that were engaged in disruptive or violent activity, allegedly, against the Government of the United States. There was a whole series, as I understand it, of those taps that were carried on within the Internal Security Division. We did not investigate that.

These taps seem to have no uniform characteristic about them. Some of them suggest that the persons were possessed of very highly classified information and they may have, in fact, been in touch with

foreign intelligence agencies. Others of them seem to suggest that they were done to determine the character or habits, personal habits, of a particular employee.

The CHAIRMAN. Might I inquire, Mr. Doar, before any further questions are put, would not some of these questions that are being placed before you now probably be answered if we were to continue to go forward with some of the information in the presentation that you are about to make?

Mr. DOAR. Yes, it will.

Mr. DENNIS. Mr. Chairman, may I make one inquiry before Mr. Doar continues?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you.

Mr. Doar, I note in Mr. Hoover's memorandum at 1.2, in the paragraph at the bottom of the page, he makes the statement that in his judgment, many of these leaks that were being investigated came out of the Public Affairs Office of the Department of Defense and the Systems Analysis Agency in the Pentagon because those desks were held by employees who were strongly anti-Nixon, who were Kennedy people, who were McNamara men, and so on. I wonder whether your research has indicated that previous administrations had been confronted with any comparable situation in that regard?

Mr. SEIBERLING. Regular order, Mr. Chairman.

Mr. DENNIS. This is on the subject that the gentleman has been talking about. I should think I could talk about this tab as well as any other tab or document.

Mr. DOAR. Well, I have never seen any allegation quite like this. I will tell you one that I saw myself, or heard about myself, that shortly after I was appointed and came to the Department of Justice in the Eisenhower administration, shortly after the Kennedy administration took over, Mr. Hoover wrote a memorandum to the Attorney General that was not complimentary to me and he said that this was the same John Doar who was appointed by President Eisenhower.

So I can tell you that Mr. Hoover, at the beginning—I have a feeling that Mr. Hoover, at the beginning of each new administration, may have had the tendency—and this is just my own experience, of suggesting that persons in the former administration may have been giving out information—may have been disloyal to the new administration.

Mr. DENNIS. Well, Mr. Doar, I think you would be an ornament to any administration as far as I am concerned. But that is not the point I am making. The point, I think, is a legitimate point to consider here along with other points. It is that when we are considering these wire-taps, we ought to consider to some degree, at least, the atmosphere and the provocation and the situation which existed at that time.

Mr. DOAR. Mr. Dennis, I agree with that completely, and I am just saying that I have great respect and had great respect for Mr. Hoover. But I have read an awful lot of memorandums written by Mr. Hoover, and as an historian, I would suggest that you ought to approach memorandums by Mr. Hoover with some skepticism.

The CHAIRMAN. Let us proceed, gentlemen. Mr. Doar.

Mr. DOAR. I think it appropriate that in tab 1.1, Mr. Tolson was

Mr. Hoover's righthand man: Mr. DeLoach was probably the No. 2 man. In the liaison with the White House during the Johnson administration and during the first days of the Nixon administration, Mr. Sullivan was the No. 3 man. This memorandum at 1.1 indicates that Mr. Kissinger and the President were down at Key Biscayne and there was a story in one of the national newspapers. This caused great concern about leaks and they were asked if they could look into this and see where this leak came from. At 1.5 is Mr. Kissinger's summary.

Mr. HOGAN. Mr. Chairman, could I ask a question on that tab?

The CHAIRMAN. Go ahead, Mr. Hogan.

Mr. HOGAN. Have Mr. Sullivan and Mr. DeLoach been interviewed by our staff?

Mr. DOAR. Mr. Sullivan has, but not Mr. DeLoach.

Mr. HOGAN. I recall from some of the previous tapes and transcripts that John Dean said to the President that DeLoach and Sullivan knew a great deal about the illegal wiretapping and so on of other administrations. Was that asked of Mr. Sullivan?

Mr. DOAR. Yes.

Mr. HOGAN. Is there an intent to interview DeLoach as well?

Mr. DOAR. The answer to that is that the present intention is no. I think that we have the memorandum of Mr. Sullivan with respect to this, Congressman Hogan. We did not include it in the material. It is available for your examination. I think perhaps if I brought that over to you and you went over it, then we might agree that it probably would be unnecessary to pursue it with Mr. DeLoach.

Mr. HOGAN. Thank you. I would appreciate that.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Mr. Doar, do we have the newspaper article in question here that prompted this whole series?

Mr. DOAR. The problem with the newspaper article is if you get the newspaper article, then the name of the source is disclosed.

Mr. FLOWERS. I think we ought to get that. I think it would be important to see what kind of article it was that prompted Dr. Kissinger going up in smoke over it. That is what would be very interesting.

Mr. DOAR. We will get that for you.

I would like also to refer you back to tab No. 1 and indicate to you just the nature of the material behind the tabs. It consists basically of two types of material. First are internal memoranda within the FBI during the time that this program was in effect. That is reflected by the tab in 1.1 and 1.2. Then testimony by Mr. Kissinger, Mr. Ruckelshaus, and Mr. Richardson in 1973, following the time that an investigation was made by Mr. Ruckelshaus as to just exactly what had taken place in connection with this program in 1969.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. On tab 1, as well as in terms of the President's explanation of the program, I am still at a loss to understand. Was there any legal basis for the institution of the program described in tab 1?

Mr. DOAR. I would say that at that time, there was a good faith belief that this kind of program could be undertaken without applying

to the court. So there was a legal basis or belief that that kind of program could be undertaken.

If you look at the criteria that the President set forth in his speech.

Mr. WALDIE. Is that what the President meant by "under law in existence at that time?"

Mr. DOAR. Yes, that is what he meant.

Mr. WALDIE. In your view, was that a good-faith reliance on the law in existence at that time?

Mr. DOAR. In my view, it was with respect to the policy. With respect to the program—

Mr. WALDIE. Without any further belaboring the point, can you give me a reference to the law in effect at that time?

Mr. DOAR. Yes, I can. I would think that we have a couple of internal memoranda of the Department of Justice, setting forth executive orders and practices of the Department.

Then the *Keith* case discusses some of the matters, too.

I want to be sure, Congressman Waldie, that I made myself clear about this. There is a distinction between the program and the application of the program.

Mr. WALDIE. I understand that.

Mr. DOAR. I am only talking now about the program.

Mr. WALDIE. I understand that. I am not asking about the execution of it. I am talking about the program described in tab 1 without the execution of it.

Mr. DOAR. I think there is no question that the program described in tab 1, there was a good-faith belief that that was a legal program.

Mr. WALDIE. Then you will provide us with the memo that describes the legal basis of such a program?

Mr. DOAR. Yes.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Do we get into later on in these materials the White House assertion that there was an inherent power within the Presidency to wiretap without regard to the laws or the Constitution? Is that brought out somewhere later on?

Mr. DOAR. The only time we get into it is at a very late date. Mr. Ehrlichman makes this assertion. So we get into it then.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Doar, could I just refer to 1.7, page 269, the testimony of Elliot Richardson, where he indicates in the last sentence of that paragraph, he said "This reflected the FBI's traditional role as the sole agency in the Federal Government that conducted national security wiretaps."

In discussing the legality of the wiretaps authorized under this section, is it your conclusion or is it your understanding that the FBI is the sole agency that would be authorized, even under the decisions prior to *Keith*, that it is only the FBI that could conduct wiretaps under the law?

In other words, Richardson seems to be saying that only the FBI could do this. We then have other examples in our investigation dealing with the Watergate, for example, where we have somebody other than the FBI conducting wiretaps?

Mr. DOAR. I do not think there is any legal basis for the White House personnel or Secret Service personnel or people employed by the White House to do this.

Mr. COHEN. Is that so under the law, then, that only the FBI can conduct wiretaps?

Mr. DOAR. The FBI did this on the basis of tradition and experience and a Department of Justice order that was first issued in 1940. The legality of it had never really been challenged.

Mr. COHEN. I understand that. Subsequent decisions have ruled some of them to be illegal in fact. What I am asking is, assuming they were legal, at least ostensibly at that time because of prior practice, is it your understanding and your judgment that even if that were the common assumption there, it was limited to the FBI conducting the wiretaps and no one else?

Mr. DOAR. That was my understanding.

The CHAIRMAN. The Chair is going to state that if there are going to be as many questions as the Chair has already heard, then the Chair is going to adopt a different procedure. The Chair initially stated that questions would be asked purely for the purposes of seeking clarification. Now, we are asking for further comments on the part of the counsel, and this is taking up our time unduly. We have been started now for a half hour and we have not gotten past tab 1. If we are going to get through with this presentation sometime this summer, I am afraid that we are going to have to revert back to what I had originally stated, and it is the only way we are going to proceed, and that is that questions will be reserved until after the presentation of that day and if there are questions that are being inquired of, then I think there ought to be written questions submitted afterward. Otherwise, we are not going to be through with this presentation.

Mr. Doar you continue with your presentation.

Mr. DOAR. Tab No. 2.

Mr. GILL. Tab 2, in each of the 17 cases of wiretapping in the program authorized by the President, the FBI wrote to Attorney General Mitchell requesting written authorization after receiving a directive for a tap. In each of the 17 cases, the Attorney General authorized the wiretap. Mitchell has denied seeing or signing any such authorization and denied seeking any summaries of wiretap logs.

Mr. DOAR. We will develop in subsequent tabs from whom the FBI received the directive for the tap. It seems undisputed that the Attorney General was mistaken with respect to signing the authorizations. When he first indicated at tab 2.3 in an interview on May 11, 1973, Mr. Mitchell said in the third paragraph that he never saw nor approved any such requests for wiretap coverage from the FBI, stating none were submitted to him by the FBI.

Mr. Mitchell stated the reason Mr. Hoover came to him at that time was because he, Hoover, was greatly concerned that such wiretaps were in effect and wanted Mitchell to informally intercede with the White House in an effort to discontinue these wiretaps.

Now, subsequent to that, there was an exchange of correspondence between Mr. Mitchell and Mr. Ruckelshaus, which you will see on tab 2.4 and 2.6. But 2.5 is an internal FBI memo of May 17, 1973, in which the handwriting experts within the Bureau examined the questioned

Mitchell signatures on 15 documents authorizing technical installations and a comparison made of these signatures with signatures appearing on a number of similar documents maintained by Mr. Felt. The conclusion was reached that all signatures were prepared by the same individual.

As you see, at the next page, with respect to the letter from Mr. Ruckelshaus at 2.6 to Mr. Mitchell, Mr. Mitchell points out in that letter, or Mr. Ruckelshaus did, that Mr. Mitchell did in fact receive and sign these authorizations. Tab 3.

Mr. GILL. Tab 3, although standard Department of Justice procedure required an Attorney General to review national security wiretaps every 90 days in order to reestablish their necessity, Attorney General Mitchell undertook no review of any of the 17 wiretaps. A court order was not obtained for any of them.

Mr. DOAR. Tab No. 4.

Mr. GILL. Tab 4, unlike other national security wiretaps, the 1969-71 wiretaps was not entered in the FBI indices. The files and logs of the wiretaps were maintained only in the Office of Director Hoover or Assistant Director William Sullivan and no copies were made. Such a procedure was requested by Col. Alexander Haig when the program began.

Mr. DOAR. During the course of our investigation, Mr. Jenner and I went to the FBI to examine some of the most sensitive of these materials. The FBI is divided into divisions, investigation divisions, one of which, I believe, is the Internal Security Division. The men in charge of that Division permitted us to look at certain of the files and reviewed for us the fact that in one or two of the files, there were documents that were missing—I think one or two documents. Although we did not secure an affidavit from these FBI agents who were in charge of the Internal Security Division, I can represent to you that they indicated that in their 27 years within the FBI, they had had no prior experience with this kind of a procedure where there were no records, no indices, maintained in the regular course of the FBI's business, and that these two gentlemen during the time that these taps were going on, although they were in charge of the program that carried on what Congressman Edwards refers to as the Mitchell program and thought they knew about all of the wiretaps, did not know about these taps.

Mr. Sullivan, Congressman Hogan, was asked to reply to a number of interrogatories after Director Ruckelshaus became Director. Tab 4.1 is the interrogatory and Sullivan's answers to the interrogatories in May.

I would like to direct your attention to certain of the questions. Perhaps you might mark question and answer No. 1, No. 12, No. 21, and No. 22. Mr. Sullivan was asked in question 1 the identity of the White House official or officials who requested that the FBI initiate this sensitive wiretap coverage and identity of any followup calls for similar coverage on others; that Mr. Sullivan considered that. "In regard to the White House, I think it would be most appropriate if this question were addressed to Mr. Haldeman."

Question 12—

Mr. SMITH. Mr. Doar, where are the answers?

Mr. DOAR. The answers are behind the tab 4.1——

Mr. JENNER. The fourth sheet.

Mr. DOAR. Mr. Sullivan was asked:

To whom and in what manner was such information disseminated?

Mr. Sullivan answers:

The material was disseminated by letter over Mr. J. Edgar Hoover's signature to the White House. For sometime the letters were addressed to and sent to the President and Dr. Kissinger. Later they were sent only to Mr. Haldeman. A few summaries were prepared for the Attorney General in memorandum form.

Then there is a star:

In May 1970 there was a meeting at the White House of the President and Mr. Hoover. They decided the letters would go to Mr. Haldeman.

Then question 21, which ask:

As this wiretap project was ongoing, to whom in the White House or any other place were reports made concerning results obtained?

The answer is:

To Dr. Kissinger and later this was changed to Mr. Haldeman.

Question 22:

How were these reports conveyed, written or oral, and with what frequency were they made?

Answer to 22:

They were written reports, hand-carried. I do not recall the exact frequency but they were sent over whenever anything appeared on the logs which were relevant.

Now, if you will look at 4.2, I think, committee members, this is the beginning of the wiretap program. In paragraph 2, it relates that the request for a specific tap—for four taps, actually—came from Colonel Haig, who came to Mr. Sullivan's office on Saturday to advise him that the request was being made on the highest authority and involved a matter of most grave and serious consequences to our national security:

He stressed that it is so sensitive that it demands handling it on a need to know basis, with no record maintained. In fact, he said, if possible it would even be desirable to have the matter handled without going to the Department; however, I was told the Attorney General is aware in general of the main elements of this serious security problem.

Then he adds:

Colonel Haig said it is believed these surveillances will only be necessary for a few days to resolve the issue.

Tab 4.3 is Director Sullivan's report to Mr. Hoover about Colonel Haig's visit.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Do we know at this time and is it appropriate to discuss at this time what problem is referred to here by Colonel Haig?

Mr. DOAR. It appears that it is the newspaper story. There is one suggestion, however, either in Dr. Kissinger's testimony or one of his affidavits, that indicates that after the wiretap program was placed into effect, Secretary Kissinger went to the Department and read the logs. I believe he is quoted as saying after he read the logs that there

was not anyone on his staff that he could rely upon—something to that effect.

So it is possible that besides this article, there was a concern for security in view of the people that worked for Dr. Kissinger.

Mr. DENNIS. Which article are we talking about?

Mr. DOAR. I am talking about the article that was referred to in tab 1, when Dr. Kissinger called from Key Biscayne, that we are going to furnish to you.

Mr. OWENS. Mr. Chairman, very briefly.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, you are going to furnish that newspaper article to all of us?

Mr. DOAR. Yes.

Mr. OWENS. It is difficult to evaluate their concern without having it. Are the names of most of those 17 persons tapped, are they still secret? I know a lot of them have leaked out, particularly newsmen and so forth. Is there a reason for keeping them secret from this committee?

Mr. DOAR. Well, the reason is, as it will become apparent later on, as you see the reports that were furnished to the White House about these individuals, that most of the material did not reflect any indiscretion or illegal activity by any of the individuals, and there is a lot of material that is unrelated to that. So that the names of these persons should not be disclosed publically. However any member of the committee who would want to know the names, we would be free to give them.

Mr. OWENS. It seems very difficult to evaluate motivation without knowing who they tapped.

Mr. DOAR. I think, Congressman, as we go through the material, perhaps it will become a little easier.

Mr. MCCLORY. Mr. Doar, on 4.1, the answer to No. 25, it seems to me, is extremely significant in that it names the source of the leaks and they can describe with precision where it comes from. The source of the leak was in the FBI, which would indicate a need for some better intelligence than the FBI if the leaks are coming from the FBI.

Mr. DOAR. Well, no, Congressman. If you look at the question, they are talking about leaks in 13. That relates to the Time magazine article that came out in 1973 revealing for the first time the existence of this program. It does not relate to leaks in 1969. The leaks within the FBI had nothing to do with this program whatsoever.

Mr. FROELICH. Inasmuch as you are going to furnish us with a copy of the article, could you tell us the subject of the article?

The CHAIRMAN. The article is going to be presented and the member will have an opportunity to examine it. I think we had better proceed.

Mr. DOAR. We want to be sure about it. Tab No. 5.

Mr. GILL. Tab 5, following the President's authorization of the 1969-71 wiretapping program, wiretaps were placed on the telephone of seven members of the staff of the National Security Council. The wiretaps for the seven specific members of the NSC staff were requested orally by Col. Alexander Haig, who was then an assistant to the NSC chairman, Kissinger. A renewed tap on one of these seven was later requested orally by H. R. Haldeman.

Mr. DOAR. At tab 5.1, you see an example of the procedure that Mr. Hoover followed in securing authority from the Attorney General to institute this technical surveillance. The document is marked "top secret." It goes to the Attorney General. It sets forth the person who has made the request, Colonel Haig. It sets forth that it is made on the highest authority that it involves a matter of grave and serious consequences. There is no specific explanation of that to the Attorney General. Then they list the names of persons that they want tapped and then some background.

In one instance, there is a suggestion that one person, while in Paris, reportedly leaked information to newspapers concerning happenings at the Peace Conference. That is in the end of the first paragraph. And there is some other background information. One of the persons had had a prior investigation and he had contact with Soviet nationals, but the investigation did not disclose at that time any pertinent derogatory information.

I think it is important to state to members of the committee that if the Attorney General had not signed the authorization based on this request, the FBI would not have instituted the tap.

We come later to a request that was made to tap the phone of Joseph Kraft and that request went over to the Attorney General and he never returned it and the Bureau did not institute that domestic tap.

Mr. SMITH. Mr. Doar, in regard to the purported signature of the Attorney General on 5.1, that report or request by Mr. Hoover, I think a previous tab stated that all of these were done by the same individual, but it did not say whether or not it was Mr. Mitchell, is that right?

Mr. GILL. No, sir. What they did is to take out a group of his known handwriting and compare it with these 17 signatures and agree that the known handwriting and these were all by the same individual. These taps of the seven are scattered. There are some in 1969 when the program began, and you will note that some of them are a year later, in 1970, there were others put on.

The CHAIRMAN. Mr. Jenner?

Mr. JENNER. Mr. Chairman, ladies and gentlemen, the longhand lettering that you see in the blanks is the lettering that we substituted for actual names pursuant to our agreement with the Department of Justice, as has been explained by Mr. Doar earlier.

Mr. DOAR. As the members—

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Did I understand that the checking of the handwriting was also applied to some comments written on the authorizations, that those also were checked as well as the signature against known handwriting?

Mr. GILL. I do not know about the comments being checked, Mr. Sarbanes.

Excuse me, it may say that it is.

Mr. CONWAY. Congressman, on tab 2.6, which is Mr. Ruckelshaus' letter to Mr. Mitchell, in the last paragraph on the first page, in the middle of it, it says "On at least one such letter handwritten comments were added by you to indicate expeditious installation."

Mr. GILL. That one is not among these first seven. It comes later.

Mr. DOAR. Tab 5.1 is a request for six or seven taps in May 1969. Tab 5.2 jumps all the way to a request in October 15, 1970. It indicates that this time, it is Mr. Haldeman that is making the request for the information. Tab No. 6.

Mr. Gill tab 6, five of the taps referred to in paragraph 5 were discontinued after a relatively short time, the shortest being 1 month; two continued for an extended period. Three of the staff members were subject to wiretaps for substantial periods after leaving the NSC. Two were tapped when they were no longer employed by the Government, but were serving as advisers to a U.S. Senator who was a Democratic Presidential candidate.

Mr. DOAR. One of the persons tapped was Morton Halperin and he has brought an action against Mr. Kissinger, and of course, the facts with respect to his tap, much of the information is a matter of public record, although some of the materials are under seal at the court.

Halpern, from the very beginning, was under suspicion by the highest people in the White House as being the source of leaks. As you will see from his affidavit, 6.4, you will see there is the reference to one of the articles, which was an article by William Beecher which appeared in the New York Times, which reported that the United States had begun bombing Cambodia. Mr. Kissinger told him that he was suspicious because of his political views, that a number of high-level figures in the Nixon administration were suspicious "of my political views and considered me disloyal to the administration." He said Mr. Kissinger "informed me that for a period of time he would not give me access to any of the more sensitive information regarding national security matters. That way, he stated, if any information leaked I could not be blamed."

He said that that period lasted until he resigned on September 1969, and he said: "After May 9"—that was the day that the wiretap program was instituted—"I was given no access to sensitive material, including information relating to private Vietnam negotiations, negotiations with the People's Republic of China," and so forth.

There is a footnote there which corroborates this by setting forth what Colonel Haig testified at the Ellsberg trial to the effect that Mr. Halperin would not have had access to the more sensitive third party contacts which may have occurred during that period.

I make that point because the tap on Mr. Halperin was the one that continued for an extended period of time, I think a total of 22 months.

Tab 6.1 is a report by Mr. Smith to Mr. Miller of the Internal Security Division of the Federal Bureau of Investigation. This reveals, sets forth his collection of the material from room 128 at the Executive Office Building on May 12, 1973. We will develop later how the material got from the FBI office over to the White House. I would suggest to the committee members that you might want to read this memorandum in full, because it does set forth in quite considerable detail the details of this.

Mr. Dennis, if you would look at page 6 of that you will see the third paragraph, where it starts:

"It is to be noted that Dr. Kissinger accompanied Colonel Haig" and read the logs, and then said "It is clear that I don't have anybody in my office that I can trust except Colonel Haig."

Now, the next page of that document, which was retyped, page 7. I would like to direct your attention to the bottom paragraph on page 7, which reads as follows:

"In a preliminary review of the various summaries furnished to the White House, nothing was found which would indicate that a violation of Federal law was determined from the electronic surveillance coverage, nor was there any specific instance of information being leaked in a surreptitious manner to unauthorized"—and that is where it stops. That did not continue. Whether it was blocked off or not, we do not know.

It is just "to unauthorized", period.

Mr. GILL. In that memorandum, beginning on page 3 and on page 4 are the dates of the installation of all of the taps and the duration of them, and you will see they range from the earliest ones in May 1969 to the last request in May 1970.

Mr. SEIBERLING. Mr. Chairman, who are Mr. Smith and Mr. Miller?

Mr. GILL. Mr. Miller was an Assistant Director. I do not know exactly where in the hierarchy he was. I believe Mr. Miller was with the International Security Division at the FBI.

Mr. Smith was a special agent who accompanied Mr. Ruckelshaus to the White House to recover these materials and was then assigned to inventory the materials that they obtained. He is now an Assistant Director of the FBI.

Mr. DOAR. Tab No. 7.

Mr. GILL. Tab 7, in reports sent to the President, Henry Kissinger, and H.R. Haldeman, none of the seven NSC employees was established to have been a source of leaked classified information.

Mr. DOAR. The 7.1 is the first set of summaries of FBI letters that went to the White House reporting on the persons tapped. I would like to ask Mr. Gill to explain to the committee how we made these compilations of the summaries and what deletions we carried out and what standards we applied.

Mr. GILL. There are a total of 104 letters, ranging in length from a single page to eight or nine pages, in one instance. They do not fall into categories where one letter is sent reporting on one person. One letter might report on four overhears or four people and the next one on some of those people mixed with still different people. So we had to extract the information relative to each of the 17 people from this group of 104 letters.

We tried to summarize it in terms of the types of material and in some instances, specific events that were reported to the White House.

Some of the 17 people were never mentioned in the summaries, and as you will see, that is true of Mr. C and Mr. I, for example, among the seven NSC employees. Although they were tapped, nothing was heard that was even reported. We have in general left out the names of the people to whom they spoke, as well as their own names, although we tried to identify the types of people to whom they spoke. Perhaps a typical example among these seven is Mr. K, who is the first one who had substantial reports. He is the third summary in that group. They report such things as meetings they were attending, the fact that the person was annoyed with a particular Presidential decision, and that they had talked with other people who were employed at the State

Department or, in this instance, the Brookings Institution, and there is an instance in which they disagreed with Dr. Kissinger's remarks or his positions, and that is reported to the White House.

For example, Mr. K and Mr. L, both of whom were tapped, in talking to one another, they described their criticism of the President's speaking campaign on a particular instance.

In each instance in which a latter designation is placed in lieu of a name, that is a person who was tapped. Other people are either simply assigned blanks or are given a general descriptive characteristic rather than being assigned a letter designation. So if you see a letter, that is a name of a person who was subject to a wiretap.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. May I ask counsel. I am interested in this: Why is a detailed report on each of these 17 people necessary to our inquiry?

Mr. DOAR. I think it is necessary for the committee to know the nature of the information that was furnished to the White House with respect to the people tapped, in taking into account whether or not the policy that was enunciated for the taps was in fact applied.

Mr. McCLORY. May I ask, do you think it is significant that the employee would regard Mr. Kissinger's actions as stupid and the President's speech as outrageous? Does that imply any lack of support or loyalty in the job which he is performing?

Mr. DOAR. Not in my opinion. I think the idea of that kind of tapping to get that kind of information is totally improper.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Doar, I am confused.

On 7.1, page 5, who is expressing admiration for Angela Davis and the Black Panthers?

Mr. GILL. That is an unidentified person in a conversation.

Mr. HOGAN. In other words, an unidentified person is speaking to Mr. K's wife? Or with Mr. K?

Mr. GILL. Mr. K, in a conversation, related that there was an unidentified person who had spoken with Dr. Kissinger and that that person had an admiration for Angela Davis and the Black Panthers.

Mr. HOGAN. But he had spoken to Dr. Kissinger, not to Mr. K?

Mr. GILL. It is not clear, but Mr. K knew that that person had spoken to Dr. Kissinger and recited that fact over the telephone.

Mr. HOGAN. Thank you.

Mr. GILL. These are summaries from the letters to the White House, not from the log material. In other words, the process was that the FBI would reduce the actual recorded overhears to a summary and forward that to the White House. That is what we in turn have summarized.

Mr. L is one of the people who left the NSC and joined the staff of a Democratic Senator who was a candidate for the Presidency. His tap remained on when he was in that position and they do report on the plans of that Senator and his associates as to campaign speeches and trips and that sort of thing.

Mr. WIGGINS. Mr. Chairman?

Mr. OWENS. Were tape recordings made of all these conversations

and later destroyed? How were those procedurally handled, do we know? Presumably, all conversations were initially taped, is that correct?

Mr. GILL. That is correct. Presumably, all logs are still in existence at the FBI.

Mr. OWENS. When you say tape recordings——

Mr. GILL. The tapes have been destroyed or erased, but the transcripts of those are still in the hands of the FBI.

Mr. OWENS. So every single conversation that was taped, there is a transcription for?

Mr. GILL. Well, we have not examined all of those, but that is our understanding, that the logs, when they write down what people said in sequence, just as the transcript, are still at the FBI and they constitute thousands of pages.

Mr. OWENS. They are verbatim transcripts, or simply summaries?

Mr. GILL. Yes: they are verbatim transcripts.

Mr. OWENS. But we are sure the tape recordings were destroyed?

Mr. GILL. There is evidence in the FBI memoranda and in the testimony of Mr. Ruckelshaus that the tapes were erased, just simply as a housekeeping measure, to use them again.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Mr. Doar, on the question of whether a tap would be proper or not proper, I call your attention to 7.1, Mr. B, a member of the National Security Council staff, an indication that he had been in contact with a newspaper reporter who had had numerous contacts with individuals assigned to the Soviet-bloc embassies.

Would you characterize this type of tap on this type of material to be in the category of a proper tap?

Mr. DOAR. Yes, I think it might well be proper.

Mr. MARAZITI. The other is, I concur with your thinking, may not be proper. However, I think the point is this, is it not, that every wiretap that is engaged in is not expected to lead to fruitful materials in the event of a criminal prosecution or investigation. Is it not frequent practice to procure the wiretap on suspicion and the suspicion may not be founded; however, the justification for the tap might be there? In other words, every lead does not lead to a successful termination. So the test of whether there should be a tap or not is not necessarily in the final result.

Do you see the point I am trying to make?

The CHAIRMAN. I do not think counsel can draw those conclusions. I think if we get on with the presentation, maybe each member may have a better understanding if he will listen and read. Counsel is not going to make up his mind for us.

Mr. MARAZITI. Mr. Chairman, the counsel has reached a conclusion that certain taps here are not justified.

The CHAIRMAN. The counsel has not. The question was asked——

Mr. MARAZITI. And that is a conclusion——

The CHAIRMAN. The gentleman is out of order. Mr. Doar, will you please continue?

Mr. DOAR. Mr. Chairman, I would like to say that with respect to these 17 taps, they follow a wide range if you study them, and you

cannot draw any general conclusions from all of them, on the basis of all of them. Tab No. 8.

Mr. GILL. Tab 8, in the cases of the newsmen who were tapped, three were ordered by Colonel Haig. Kissinger has testified that the name of one of these three was presented by FBI Director Hoover to the President as a man who had connections with an allied foreign intelligence service and the decision to place a tap resulted from that presentation.

The fourth newsman was a national television commentator. He was wiretapped at the direction of Attorney General Mitchell. The Attorney General stated that the President requested that the commentator be placed under immediate electronic surveillance following the review by the President of an FBI report about the individual.

Mitchell also requested physical surveillance of the commentator, but withdrew this request after being advised by the FBI of the difficulties involved.

Mr. DOAR. Tab No. 8.2 is the internal memorandum between Mr. DeLoach and Mr. Tolson, dated September 10, 1969, wherein the Attorney General requested a tap after having conferred with the President, who had reviewed a file on the particular individual. You will note that at the bottom of the second paragraph, it is indicated that copies of the memoranda regarding this surveillance should be sent only to Mr. Ehrlichman at the White House and to the Attorney General. Tab No. 9.

Mr. GILL. There is an indication as to one of these newsmen, and it is at tab 8.5, that he was physically—subject, rather, to physical surveillance. There is a note from Mr. Courtland Jones, who was Director of the Washington field office of the FBI, of the observation of this particular individual with another one of the people who was subject to tap when they ate lunch at the Occidental Restaurant, and there were photographs taken of them and submitted to the FBI. There is no other explanation of that physical surveillance in the records we were furnished.

Mr. DOAR. Tab No. 9.

Mr. GILL. According to the FBI, the FBI reports on the wiretaps of the four newsmen showed that none of them had obtained information in a surreptitious or unauthorized manner.

Mr. DOAR. Tab No. 10.

Mr. GILL. Tab 10, wiretaps were ordered on the three White House staff members working in areas unrelated to national security and with no access to National Security Council materials. One wiretap was requested orally of assistant of FBI Director DeLoach by Attorney General Mitchell who represented the order as coming from the President. This tap was specifically denominated as off the record.

This White House staff member worked for John Ehrlichman, who received the wiretap reports on him. A wiretap on a second White House staff member was requested orally by Colonel Haig. The third White House staff member was wiretapped at the request of H. R. Haldeman.

Mr. DOAR. Tab No. 10.2 is Secretary Kissinger's testimony before the Senate Foreign Relations Committee, in which he indicates that he did not know, was not even acquainted with these particular individuals who worked in the White House.

Mr. GILL. One of these three was subjected to 24-hour-a-day physical surveillance as well and the summaries recite the results of that physical surveillance, as well as the wiretap.

Mr. WALDIE. I wonder. You make a distinction between the physical surveillance and the electronic surveillance, and I understand the difference, why do you make the distinction? Is different authorization required for a physical surveillance than that required for electronic surveillance?

Mr. DOAR. I do not know of any rule within the Department that would require the Attorney General to approve 24-hour physical surveillance of an individual if the Director decided that in the course of his carrying out his responsibilities, he would want to undertake such a surveillance. It is very costly. It ties up a lot of manpower. The Bureau does not want to do it unless it is productive. Generally speaking, they resisted these requests for 24-hour surveillance.

Mr. WALDIE. Do we know, where there was a physical surveillance, whether it was undertaken independent of a request from the person who authorized and requested the electronic surveillance?

Mr. DOAR. No, sir; there is no suggestion that there was any physical surveillance of any of these individuals carried on independent of a request from the White House that that be done.

Mr. WALDIE. Then is our assumption that where there was physical surveillance, it was requested by the White House in addition to electronic surveillance, and where there was no physical surveillance, the request was limited to an electronic surveillance?

Mr. DOAR. That is a correct assumption. If you look at 10.4, this is a physical surveillance of E. E did not work for the National Security Council. E worked for Mr. Ehrlichman. You will see in the second paragraph on 10.4:

The AG indicated that the President had ordered him to tell the Director that he wanted a 24-hour surveillance and a tap placed on E. He said that we should report to Ehrlichman's office the results of the surveillance and the tap.

Mr. WALDIE. And just one final question. The legal authority involved in either type of surveillance is the same or the lack of legal authority is the same?

Mr. DOAR. Well, it is much different.

Mr. WALDIE. It is much different?

Mr. DOAR. Yes.

Mr. WALDIE. It is easier?

Mr. DOAR. There is no violation of the fourth amendment in a physical surveillance.

Mr. WALDIE. I see.

Mr. DOAR. The electronic surveillance is limited by the Constitution.

Mr. GILL. Tab 10.5 is where the handwritten note of Mr. Mitchell asking for expeditious handling of it appears that was referred to earlier.

Mr. McCLORY. Mr. Doar, could I just ask this?

Is there any reason why we could not have the names, we could identify these White House staff members? You say they were not involved or did not have access to any national security material. We might like to make that judgment in some respect ourselves. Is there any reason why we could not have that information?

Mr. DOAR. No, I do not think there is. I think you are entitled to have that information.

Mr. McCLORY. I would like to have it. Thank you.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I would like to ask Mr. Doar if there is any of the information that we have received and discussed this morning which is not subject to the committee's rules on confidentiality?

Mr. DOAR. No, there is not. Everything here is highly confidential.

Mr. Gill just called my attention to the fact that he thinks that at this time, with respect to the question that Congressman McClory asked, I had agreed, with the permission of the chairman, that the names would not be released.

Mr. MAYNE. I certainly commend you for that.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. I just want to understand this: Are we saying, then, that the names will not be released here in this room, but any member can go over to the hotel and ask the names, whether it is White House people or TV commentators or not? I am just trying to understand what the ground rules are.

Mr. DOAR. The ground rules are that the committee members cannot do this and if the committee members wish this information, then we would have to go back to the Department of Justice and attempt to secure it or the committee would have to subpoena the material.

Mr. MEZVINSKY. Does that mean that even though a name was in a press account and has been acknowledged and is public information, then we do not find that out?

The CHAIRMAN. Well, that is——

Mr. MEZVINSKY. I understand the position. I am not going to belabor it.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. These are very delicate negotiations with the Department of Justice by Mr. Doar and by me. Sensitive to the rights of individuals under the Constitution, in our discussion with the Deputy Attorney General and his immediate assistant, Mr. Doar and I became convinced, and we are still convinced, that this is so delicate, so approaching a possible violation of rights under the Constitution, that absent an absolute direction from this committee which would require us to return to the Attorney General's Office and renegotiate this matter, we believe it is very highly sensitive. We gave assurances that in our judgment, the members of the committee would retain this material mentally and not utter it and that there were some areas, at least in the first instance, that Mr. Doar and I, exercising our professional responsibility and highly sensitive to the needs of the committee, that this material had to be handled in the way we are doing it.

Mr. McCLORY. Mr. Chairman, could I just add this? I am not suggesting information for the purpose of publicizing it. I do think that in the last analysis, the decision has to be made by the committee and I think it is all well and good that this information should be in the possession of counsel. But I think it should also, and I am sure it

would be available to Mr. Rodino and to Mr. Hutchinson on their request in order to help determine that conclusion which you have made. So I am not asking that we violate any of our rules of confidentiality. I am certain we have all the information on which you can base a decision.

Mr. JENNER. Congressman, I am sure you are highly sensitive to these matters. I emphasize if we—

Mr. GILL. The tab on Mr. E indicates the sensitivity on that.

Mr. SEIBERLING. Mr. Chairman, do I understand that the arrangement with the FBI is such that the material we are now going over, quite apart from the release of names, but the material we are going over cannot be released without further approval of the FBI?

Mr. JENNER. No. As far as the material is concerned, edited as it is edited, we have no restrictions to which we have agreed. Other than this—

The CHAIRMAN. I would like to advise the gentleman, though, that all of the material that we are developing here has been developed in executive session. This is an executive session and all members are proscribed from discussing these matters. If members do from time to time make comments, I would hope that they do not advert to anything specifically, because it is only under the mandate of the committee, when the committee decides as a committee, a majority of that committee, to disclose this, that we would be at liberty to disclose it.

Mr. SEIBERLING. Mr. Chairman, I was not questioning that. I was questioning whether, under the arrangement with the FBI, the committee could not disclose this material without violating the agreement with the FBI. That was the purpose of my question.

Mr. JENNER. Mr. Chairman, in each instance, to the great credit of this committee, Mr. Doar and I, at the FBI, at the Department of Justice, directed the attention of the FBI and the Department of Justice to the rules of confidentiality that this committee had adopted with respect to handling these materials and expressed our judgment in all instances that the committee, and all its members, are acting responsibly and would adhere to the rules of confidentiality.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 11.

Mr. GILL. Tab 11, none of the three White House staff members were ever reported by the FBI to have disclosed classified material. The material compiled on these staff members as a result of the wiretaps related primarily to their personal lives and their politics.

Mr. DOAR. These three staff members—I will ask Mr. Gill to give you an idea of the type, of whether they were mid- or high-level positions within the White House and what were generally their responsibilities.

Mr. GILL. They were all midlevel employees. Two of them are aides to the Domestic Council staff under Mr. Ehrlichman, and one under Mr. Finch. One was described as a speechwriter. These are not people, as noted in Mr. Kissinger's earlier testimony, who had access to national security materials and Mr. Kissinger did not even know who they were.

Mr. E was the one who was subject to physical surveillance and the summaries on him, as you will note, deal entirely with the question of

him having social engagements with a woman other than his wife, visiting female dancer establishments, some of his drinking habits, and his contacts with Republican Party officials.

Mr. F was reported to have talked to a reporter about a Presidential speech. The speech dealt entirely with domestic matters such as the revenue sharing and welfare reform.

Mr. J, who was the last tap installed, was requested by Mr. Halde- man and the summaries went to Mr. Haldeman and Mr. Higby, who was Mr. Haldeman's assistant. They reported such things as the fact that he was bored with his White House job and also that he, that in telephone calls, he was asked to look into the question of dismissing a Government attorney who had brought a pollution suit against General Motors. He was related through marriage to a prominent Re- publican elective official and was considering leaving to join that official's staff and that was reported to the White House.

Mr. DOAR. Tab No. 12.

Mr. GILL. Tab 12, three Government employees were tapped in connection with the May 1970 leak of the Cambodia bombing. Two held posts in the State Department at the Ambassadorial level; the third was a high military aide to the Secretary of Defense. All three were tapped at the order of Colonel Haig, who represented that the order for these wiretaps came from the President.

Mr. DOAR. Tab No. 13.

Mr. GILL. Tab 13, none of the three Government employees tapped in connection with the Cambodia bombing story was ever reported by the FBI to have disclosed classified material.

Mr. DOAR. Members of the committee, these first 13 paragraphs summarize the 17 wiretaps that were employed under the program that the President described in 1.3: seven members of the National Security Council, four newsmen, three White House employees that worked in the Domestic Council or for Mr. Finch, and three in connection with the bombing in Cambodia.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. In the interest of speeding up these hearings, I just wondered why we would have tab 13 in there. Certainly, when you tap lines, you do not know whether or not the individual tapped is the one that is going to give you the information. Why did we take up the time of this committee by making tab No. 13?

Mr. DOAR. Well, because we thought that it was pertinent to the inquiry.

Mr. LATTA. Do you expect, Mr. Doar, on all of these 17 taps to hit the nail on the head every time?

Mr. DOAR. No, absolutely not.

Mr. LATTA. Well, I do not, either.

Mr. DOAR. Tab No. 14.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman. Since we are at a breaking point, I take it, of some sort in the presentation of the evidence, as I understand it, Mr. Doar, ultimately, we are going to have to determine the propriety of Presidential actions with respect to these taps and in

order to do that, it becomes absolutely essential that this committee have the benefit of your research with respect to the state of the law at that time. I understood, but not clearly understood, that you were going to make available your internal memorandum summarizing the law as it existed in 1969 and 1971 with respect to authority to conduct so-called national security taps. Is that correct?

Mr. DOAR. That is correct.

Mr. WIGGINS. Well, I would hope, Mr. Doar, that you would do so on an expedited basis, because frankly, it is difficult for me to give much meaning to the evidentiary material coming in without some understanding of the law with respect to that evidentiary material. So I hope you do so promptly.

Mr. BUTLER. Like today?

Mr. DOAR. Well, I can refer you to the *Keith* case and also these memoranda and make an attempt to summarize those for you, but I cannot do it today. I can have it for you by Monday.

Mr. WIGGINS. Is the memorandum in existence, the internal memorandum discussing the law?

Mr. DOAR. Yes, but I would think it would be more useful if I could be permitted to condense it. It is a long memorandum. If you would like to see it—

Mr. WIGGINS. I would like to have the total memorandum.

Mr. DOAR. Well, fine.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Following Mr. Wiggins' point, we have heard a lot of evidence here, some of which has showed the President as not being involved in any wrongdoing, although there is some question in the minds of the members. I have a problem remembering everything from when we first started these hearings, especially as relates to some of the taped materials. Is the procedure that is going to be followed that we would have the allegation and a summary of the evidence based on that allegation, so that we can individually and collectively review what we have heard and reach some type of determination on it?

Mr. DOAR. Yes, if you would wish that, we would do that.

Mr. RANGEL. No, no, it is not a personal wish. What I am concerned about is just, as Mr. Wiggins pointed out, we need the law. You have familiarized us with what actually took place. If there is any individual member who wants to do some additional research or ask some questions, we know we can do this. But I am concerned with procedures. I do not know how many of these big books we have, but we have quite a few.

I was wondering, how do we wrap this up? How do we take that allegation and know what the evidence is as it relates to that? I know you have to be nonpartisan. I think that you have done such a good job that many of us have forgotten some of the allegations.

Mr. DOAR. Well, we would expect that we would summarize this material and organize the material for your consideration.

Mr. RANGEL. I mean this is not done for me. This is how you intended to proceed.

Mr. DOAR. No, no, for the committee, to present the alternative theories that the committee might wish to consider and the evidence

that supports those theories and present it in an organized fashion for the committee's consideration.

Mr. RANGEL. And this is worked into our end of July timetable?

Mr. DOAR. Oh, yes.

Mr. RANGEL. Thank you so much.

The CHAIRMAN. Mr. Doar, I would hope that we are not in any way, and I know you do not intentionally intend to mislead members of the committee that what is going to happen here now is that there is going to be a further condensation of all the materials that have been presented in some summarized form. What you are talking about is, rather, the presentation of what could be the possible alternatives that can be drawn based on whether or not articles of impeachment might be grounded insofar as some of the material is concerned. I do not think you intend that your staff—because I do not see that it is physically possible—that you are going to go through with another presentation more condensed than you have here. I am sure that you do not intend that.

Mr. DOAR. Well, I would expect that we would refer to the committee certain portions of this material in a way that the committee might find helpful in evaluating whether or not there was a basis for an article of impeachment or no basis for it. That is all we would do.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I just want to make this comment or question.

I think it is interesting that none of these wiretaps disclosed information which would relate to national security or unearth national security risks. On the other hand, I assume that the leaks that were the excuse for the wiretaps continued, did they not? Do you know?

Mr. DOAR. Some leaks—certainly the leaks continued. The leaks were a problem through 1971, there was a problem, which we will come to in a few minutes.

The CHAIRMAN. We have a quorum call.

Mr. WALDIE. I have just one question. In the President's discussion of the program. He used the phrase with regard to the 20 taps, "they produced important leads and made it possible to tighten the security of highly sensitive materials."

Have we in your review discussed those important leads?

Mr. DOAR. No, we have not found that. The only reference to that is in the memorandum of the man that picked up the FBI material.

If you will look at 1.5, at the bottom of the page, there is reference to the fact that no information was obtained.

Mr. WALDIE. I gather that is his conclusion, but is that a conclusion—well, I do not want your conclusion, but all the information on that conclusion of the President is contained within the tabs that we have discussed?

Mr. DOAR. Congressman, there is another reference, but I cannot find it now. Could I find it for you later and give it to you?

Mr. WALDIE. All right, fine.

Mr. SANDMAN. Mr. Chairman, could I ask one simple question?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. Mr. Doar, what I am trying to belabor here is the point we are making whether or not evidence exists that the proper

procedure was not followed, or are we looking into an abuse of Presidential power?

Mr. DOAR. I think that the pertinence of this is, if you look at the complete record of this procedure, which included the removal of the files from the Department of Justice, which we will come to in a minute. So I think that the pertinence of this with respect to the question of Presidential involvement and abuse of power goes in substantial part to procedure.

Mr. SANDMAN. Well, our agreement is not on the legality to proceed as they did—

Mr. DOAR. The way the program was administered.

Mr. SANDMAN. And this we are supposed to sift as to whether or not this establishes an abuse of Presidential power?

Mr. DOAR. That is correct.

Mr. SANDMAN. I see.

Mr. GILL. In answer to Congressman Waldie's point, tab 7.3 is the testimony of Mr. Richardson on the point. He points out that there is nothing in the report that in itself establishes either that an individual was the source of leaked information or that any action was taken with regard to him as a consequence of the tabs.

Mr. LATTI. Mr. Chairman, I would like to refer to 7.1, however, where it says:

A summary addressed to Henry Kissinger on May 19, 1969, reported that Mr. B., a member of the National Security Council staff, had been in contact with a newspaper reporter who had had numerous contacts with individuals assigned to Soviet-bloc embassies.

Mr. DOAR. It is the reporter who had the contacts.

Mr. LATTI. But this is a tap, is it not, information gotten by the tap? Or why is it in here?

Mr. DOAR. Yes.

The CHAIRMAN. We will recess and following the quorum call, return immediately thereafter.

[Recess.]

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 14.

Mr. GILL. Tab 14, in June 1969, John Ehrlichman directed John Caulfield to have a wiretap installed on the office telephone in the home of the Washington newspaper columnist, Joseph Kraft.

Ehrlichman has testified that he discussed the proposed wiretap with the President, but that he did not know the wiretap was ever instituted. The wiretap was installed by a former director of Security for the Republican National Committee with the aid of a Secret Service employee.

It remained in place for 1 week, during which Kraft was not at home. Caulfield has testified that Ehrlichman then told him to cancel the operation.

At the same time, Deputy FBI Director, William Sullivan, was ordered by FBI Director Hoover to travel to a European country and arrange for electronic surveillance of Kraft. A 19-page summary of conversations overheard from surreptitious listening device in Kraft's hotel room was prepared, which was prepared, which was sent to Ehrlichman.

Ms. JORDAN. Mr. Chairman, before Mr. Doar starts—

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. In the next sentence when you said, "Ehrlichman has testified that he discussed the wiretap with the President, but that he did not know," to whom does that "he" refer?

Mr. GILL. Mr. Ehrlichman did not know whether or not the tap was actually installed.

Ms. JORDAN. Thank you.

Mr. DOAR. Tab No. 15.

Mr. GILL. Tab 15, on July 8, 1969, Assistant FBI Director Sullivan reported to Director Hoover that the wiretap on one of the NSC employees produced nothing significant from the standpoint of discovering leaks, and recommended that some of the coverage be removed.

The tap on that employee was not removed; it remained in place until February 10, 1971, 17 months after the employee resigned as a full-time employee of the NSC, and 9 months after he terminated his relationship as an NSC consultant.

Mr. DOAR. Tab No. 16.

Mr. GILL. Effective, July 1969, Anthony Ulasewicz, a retired New York City policeman, was hired as an investigator by John Ehrlichman, counsel to the President. From that date until mid-1972, under the direction of Caulfield, Ulasewicz conducted numerous investigations for the purpose of obtaining information of possible political value to the Nixon administration. His salary and expenses were paid by campaign fundraiser, Herbert Kalmbach, from political contributions held by Kalmbach.

Mr. DOAR. This fund was that fund that Kalmbach held in cash, and that was not reportable contributions. Tab 17.

The CHAIRMAN. Mr. Doar, there is a matter of explanation on tab 15. Is there in the following tabs and supporting documents any reason or explanation as to why the wiretap was not removed?

Mr. DOAR. No, there is no explanation of that.

The CHAIRMAN. Thank you.

Mr. DOAR. And the first paragraph of the letter says that Mr. Sullivan suggested to Colonel Haig that some of the coverage be removed, and that he had previously suggested the removal of the coverage on G.I.C. & B. and he agreed.

The CHAIRMAN. Thank you.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Was Ulasewicz paid in this fashion throughout this period in paragraph 16?

Mr. GILL. Yes.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, would you refer back to 14, please, tab 14.5. The main tab says that Sullivan traveled to Europe and was ordered by the FBI Director to travel to Europe. The 14.3 summary has a confusion line there, the third paragraph. "WCS," and I presume that's Sullivan, "apparently with knowledge and consent of Hoover traveled to," I suppose Europe. Is that the only evidence to sustain that conclusion that Sullivan traveled under Hoover's authority?

Mr. DOAR. No. There is a very detailed file in the FBI, with respect to this matter. It is this file that Mr. Jenner and I went to the FBI and examined, and they were particularly concerned about the sensitivity of that file. But, there is no question about the fact that this operation was carried on by Mr. Sullivan, reporting directly, and continuously and regularly to Mr. Hoover.

There is one document from Mr. DeLoach with respect to this matter that was missing from the file, and the subsequent letter to the Attorney General asking for authorization to tap Mr. Kraft's phone here in Washington was not returned, and the copy of that memo is not in the file. And the FBI agents to whom we talked had no explanation for that.

Mr. WALDIE. One final question. I find conclusions as to every surveillance. Is there a conclusion as to Kraft's surveillance?

Mr. DOAR. My recollection is it produced nothing. Mr. Jenner and I examined that file. There were two letters to Mr. Ehrlichman in that file from Mr. Hoover with respect to this surveillance overseas. And my recollection was that it produced nothing of significance.

Mr. WALDIE. Do you agree, Mr. Jenner?

Mr. JENNER. That is so.

Mr. WALDIE. That was both the domestic and the foreign surveillance?

Mr. JENNER. That is correct.

Mr. DOAR. They did not tap Mr. Kraft's phone, the FBI did not tap Mr. Kraft's phone in this country for the reason that the authorization was never returned by Mr. Mitchell.

Mr. WALDIE. Oh, I see.

Mr. WIGGINS. Counsel—

Mr. WALDIE. One last question. Are they required to obtain authorization from Mr. Mitchell to tap overseas, and was that obtained?

Mr. DOAR. I do not think that was obtained, and whether it was required or not, I am just not familiar with the practices. I think probably not.

Mr. WALDIE. Then just a final question. Does the FBI engage in any activities overseas, according to law, or is that CIA? Is the FBI permitted to engage in activities overseas pursuant to law?

Mr. DOAR. Well, the FBI has some agents overseas. What their activities are I just cannot tell you. Whatever activities the FBI engages in overseas, I would believe that they would have authority for it.

Mr. EDWARDS. If you will yield to me, Jerry, what happened to the Secret Service man who tapped, who assisted in the tapping of Kraft's phone? Did he get fired?

Mr. DOAR. Well, the only reference we have to that is some questioning by the SSC, and Mr. Caulfield did not give the name of that man, and so we do not know that.

Mr. WIGGINS. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Would it be possible to have a typewritten transcript of item 14.3 since it is a little bit hard to read?

Mr. DOAR. Yes.

Mr. SEIBERLING. Thank you.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, would you identify please C-O-N-M-Y?

Mr. GILL. That is the FBI agent's name who prepared that summary.

Mr. WIGGINS. Thank you. That is a person.

Mr. DOAR. Tab No. 17.

The CHAIRMAN. Mr. Doar, one other question before you go on. Is there any reason advanced as to the wiretap on Mr. Kraft?

Mr. DOAR. Well, I am trying to recollect what the information was that we saw in the file. My recollection is, and I would like Mr. Jenner to check me on this, that was vague, but there was this memorandum from Mr. DeLoach that was not in the file.

Mr. JENNER. That is correct. And the two agents indicated or told us generally what was contained in that memorandum that was not in the file, to the best of their recollection, and there were indications as to why.

One of the things that troubled the agents very much, which I think should be brought to the attention of the committee, is that on the foreign surveillance they were very, very concerned about possible political reverberations in a foreign country, and very anxious for Mr. Doar and me not to intimate the slightest identification of any country or any of these informal arrangements they had with other people.

The CHAIRMAN. Thank you.

Mr. DOAR. Tab 17.

Mr. GILL. Tab 17, on or about November 1, 1969, Attorney General Mitchell requested the FBI's views as to the type of coverage to be used on Joseph Kraft. The Domestic Intelligence Division of the FBI recommended spot physical surveillance and a survey to determine the feasibility of a telephone wiretap.

Subsequently, Director Hoover sent to the Attorney General a request that the wiretap be authorized. The spot physical surveillance was initiated on or about November 5, 1969, and continued until December 12, 1969, when it was discontinued as unproductive.

The Attorney General never signed an approval of the wiretap, and therefore, at that time, no wiretap was instituted.

Mr. DOAR. If you see, Chairman Rodino, the second page of the memo, that first deals with the overseas tap, and it is marked in brackets, and that sets forth the basis for the request, and it refers to the DeLoach memo. And that is the memo that was not in the file. Tab No. 18.

Mr. GILL. Tab 18, in or about January 1970, H. R. Haldeman and John Ehrlichman permitted the information contained in one of the summaries of the 1969-71 wiretaps to be used in connection with political action in opposition to persons critical of the administration's Vietnam policy.

Mr. DOAR. This is an example of the use of information that came from a wiretap that was used by some of the political people in the White House in launching a campaign in opposition to Mr. Clark Clifford, who was a spokesman opposing the President's position on the war.

The letter from Mr. Hoover, 18.1, of course doesn't reveal that the information came from a wiretap, and they refer to it as coming from "extremely sensitive sources." This memorandum went to the President and was apparently routed to Mr. Magruder, who was at that time assistant to Mr. Haldeman.

As you see from 18.2, there is a memorandum there from Mr. Butterfield to Mr. Magruder; Mr. Butterfield has told me that he does not believe that that is his memorandum. I just want to make that statement to the committee so that there would not be any misunderstanding about it. Mr. Butterfield's recollection was that Mr. Magruder asked him how he would handle the kind of assignment that he had gotten with respect to Mr. Hoover's letter to the President, and Mr. Butterfield made some suggestions. But, you will notice these dashes at the left-hand side of the page.

Mr. Butterfield's practice was that those identified subparagraphs, and so what this is is a reproduction of part of Mr. Butterfield's memorandum to Mr. Magruder. Now, that is a speculation. But, I felt that I ought to call the committee's attention to it. I do not attach any significance except for the fact that it is, in my mind, a questionable document.

The only explanation that I can give for that is that this, the original Butterfield-Magruder memorandum, went into the White House files in the ordinary course of business, and that it went into, probably into the files of the National Security Council. And that there was a Navy man, Yeoman Radford, who was copying material and sending it over to the Joint Chiefs of Staff. And he digested the original memo, and this is the product of that process.

At any rate, 18.3 and 18.4 and 18.5 and 18.6 are memoranda between Magruder, Haldeman, and Ehrlichman with respect to mounting a counterattack against opponents, political opponents, of the President with respect to the war, based on the information that came from Mr. Hoover. Tab No. 19.

Mr. GILL. Tab 19, until May 13, 1970, summaries of "top secret" wiretap material, were sent by Director Hoover to the President and to Kissinger. After that date, following a meeting among the President, J. Edgar Hoover, and Haldeman, the summaries were sent to Haldeman alone.

According to the FBI, there were 37 letters to Kissinger between May 13, 1969, and May 11, 1970; there were 34 letters to the President dated from July 10, 1969, to May 12, 1970; there were 52 letters to Mr. Haldeman dated from July 10, 1969, to February 11, 1971; and there were 15 letters to Ehrlichman dated from July 25, 1969, to September 22, 1969.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Were these overlapping letters, or are these separate and distinct letters to each of these people?

Mr. GILL. The letters that were sent to the President and to Mr. Kissinger in general were overlapping letters, although Mr. Kissinger got three that the President didn't get. The ones to Mr. Ehrlichman do not overlap with anybody. He is the only recipient of those, and Mr. Haldeman's letters are generally to him alone, and no copies sent.

Mr. DOAR. We will go on to the next book.

The CHAIRMAN. Has the next book been distributed?

[Short pause.]

Mr. DOAR. Mr. Chairman, the next six paragraphs deal with the Huston plan, and the entire plan is set forth in 21.1. It is a classified document, and I just called the attention of the committee to it. That document and the materials that we have received from the Senate Foreign Relations Committee and the House Armed Services Committee in this area is all executive session material, and the persons or the committees from whom we received it, the agencies, are very concerned that we emphasize to the committee that they do not or have not consented to its publication. And I just want to emphasize that to you.

Mr. SEIBERLING. Mr. Chairman, have they advised any reason as to why at this late stage it should be a classified document?

Mr. DOAR. Well, I have just not gotten into the discussion with them about that. I am just reporting the position of the committee and the committee counsel.

Mr. JENNER. Mr. Chairman?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. In view of that statement, I intend to leave my book here in the committee room and not take it with me, and I would suggest if we want to assure against any leaking of this information, it would be a good policy on the part of any other members as well.

Mr. SEIBERLING. Well, Mr. Chairman, on that point I think we are getting to the point where the security tail is wagging the legislative dog. We have a job to do, and we are getting restricted to the point where it is ridiculous. And furthermore, it is a farce because you can pick up the paper every day and read what has been covered in the previous session. I think we had better start figuring out how we can get this material in our hands in a way that we can make maximum use of the information to carry out our own responsibility.

The CHAIRMAN. Well, of course, at the present time though, however, we are operating with this material under an embargo, because some of this material was received from committees, and the material had been developed in executive session and never been made public. And I do not think that we could do so without violating the rules of the House.

Mr. SEIBERLING. Well, we could subpoena it separately.

The CHAIRMAN. The material is here and available, and just as we have been operating in the past, the members can take their books.

Mr. SEIBERLING. Could we not subpoena it separately from whatever the source the Senate committee got it, and then we would be free to do as we choose.

The CHAIRMAN. Well, I am afraid we would be in the process of debating subpoenas with other committees and with the House itself.

Mr. DOAR. With respect to these paragraphs. I would like the Committee's permission to have Mr. Gill read the five paragraphs right through, and then to make such comments at the end to call the committee's attention.

Mr. GILL. Tab 20. On June 5, 1970, the President, H. R. Haldeman, John Ehrlichman, and Presidential Staff Assistant Tom Huston met

with FBI Director J. Edgar Hoover, Defense Intelligence Agency Director Donald Bennett, National Security Agency Director Noël Gayler, and Central Intelligence Agency Director Richard Helms. The President discussed the need for better domestic intelligence operations in light of an escalating level of bombings and other acts of domestic violence.

He appointed Hoover, General Bennett, Admiral Gayler and Helms to be an ad hoc committee to study intelligence needs and restraints. He named Hoover as the chairman and Huston as the White House liaison.

Tab 21. On June 25, 1970, the committee completed its report entitled "Special Report Interagency Committee on Intelligence (ad hoc)" known as the Huston Plan. The report included a discussion of the current restraints on intelligence collection with respect to electronic surveillance, mail cover, surreptitious entry, use of campus informers, use of military undercover agents, and other intelligence gathering procedures.

The report set forth the arguments for and against maintaining or relaxing existing restraints on the various forms of intelligence collection, and of establishing an interagency intelligence evaluation committee.

Specific options for expanded intelligence operations were set forth for the President's consideration. The report stated that two of the proposed intelligence gathering procedures, surreptitious entry and opening first-class mail, were illegal.

At Director Hoover's insistence, the report included notations that the FBI objected to proposals for establishing a permanent coordinating committee and for lifting restraints on intelligence collections methods in all categories except legal mail coverage and National Security Agency communications intelligence.

Mr. WALDIE. Could I interrupt here a moment?

The CHAIRMAN. Counsel has asked to proceed with the first five tabs.

Mr. WALDIE. All right. I'm sorry.

Mr. GILL. Tab 22 during the first week of July 1970, Huston sent the special report and a top secret memorandum entitled "Operational Restraints on Intelligence Collection" to Haldeman.

In the memorandum Huston recommended that the President, from among the options discussed by the report, select in most areas discussed the option of relaxing the restraints on intelligence collection. Huston specifically noted that covert mail covers and surreptitious entries were illegal, but, nonetheless recommended that the restraints on the use of these techniques be relaxed.

Huston justified his recommendation in part on the past practices of the FBI. Huston also recommended the formation of an interagency evaluation committee as outlined in the report.

Tab 23, on July 14, 1970, H. R. Haldeman sent a top secret memorandum to Huston stating that the President had approved Huston's recommendations for relaxing restraints on intelligence collection. Haldeman requested that a formal decision memorandum be prepared. On or about July 23, 1970, Huston prepared and distributed to the members of the ad hoc committee a top secret decision memorandum with copies to the President and Haldeman, advising of the President's

decision to relax the restraints on intelligence gathering by use of the techniques of covering international communications facilities, electronic surveillance, and penetrations, illegal mail covers, surreptitious entry and development of campus sources.

Tab 24, on or before July 27, 1970, Director Hoover met with Attorney General Mitchell, informed Mitchell for the first time of the June 5, 1970, meeting and the July 23, 1970, decision memorandum, and stated Hoover's opposition to the plan. Mitchell joined with Hoover in opposing the plan.

Tab 25, on either July 27 or July 28, 1970, Huston, on instructions from Haldeman, recalled the decision memorandum of July 23, 1970, and requested that the members of the ad hoc committee return their copies to the White House. Haldeman told Huston that Mitchell had called concerning the plan, that the memorandum would be reconsidered, and that Haldeman, Hoover, and the Attorney General would meet to discuss the subject. Mitchell has testified that he informed the President and Haldeman of his opposition to the plan.

Mr. DOAR. Tab 23.2 is Mr. Haldeman's memorandum to Mr. Huston reflecting the reaction of the President to Mr. Huston's recommendations that there be a relaxing of certain restrictions on illegal activities with respect to illegal entry and other matters. And you will see that the subject of the memorandum is domestic intelligence review, and the memorandum reads:

The recommendations you have proposed as a result of review have been approved by the President. He does not, however, want to follow the procedure you outlined on page 4 of your memorandum regarding implementation. He would prefer that the thing simply be put into motion on the basis of this approval. The formal, official memorandum should, of course, be prepared, and that should be the device by which to carry it out.

I realize this is contrary to your feeling as the best way to get this done. If you feel very strongly that this procedure won't work, you had better let me know and we'll take another stab at it. Otherwise, let's go ahead.

Now you have seen from the statement of information, subsequent to that time the plan was withdrawn, and it was never implemented. I think that the material behind the tab sets forth the explanation and the full information about this so-called Huston plan, its genesis, its development, its submission to the President, its approval, and its withdrawal before it was implemented.

Mr. FLOWERS. Mr. Chairman? Mr. Chairman, what is an illegal mail cover?

Mr. OWENS. Are the memos in here?

Mr. DOAR. Yes, all of the memos are in here.

Mr. OWENS. The recall memo?

Mr. DOAR. Yes.

Mr. OWENS. I do not see them.

Mr. FLOWERS. Mr. Doar, can you tell me what an illegal mail cover is?

Mr. GILL. The illegal mail cover, Congressman Flowers, is opening first-class mail by whatever technique, steaming it or something, reading it and resealing it so that it cannot be determined it was opened.

Mr. FLOWERS. Well, the word "cover" is what threw me.

Mr. GILL. Covert mail covers are the same as illegal ones. The other type are legal mail covers in which they observe the addressee and

the return address, and make a record of that. That can be seen on the face of the envelope.

Mr. WALDIE. Mr. Chairman? Mr. Doar?

Mr. DOAR. Yes.

Mr. WALDIE. On the President's explanation of the Huston plan, he justifies in his speech under tab 20.1 on the basis that certain types of undercover FBI operations that had been conducted for many years had been suspended. Would you describe what those were and why they were suspended?

Then he says:

Relationships between the FBI and other intelligence agencies have been deteriorating. By May 1970, FBI Director Hoover shut off his agency's liaison with the CIA altogether.

Can you give any explanation as to what the President meant by those two justifications?

Mr. DOAR. Well, with respect to the suspension, prior to the covert mail covers and the surreptitious entries in the Huston Plan it is stated, represented that this practice was followed by the Bureau for a number of years, up until 1966, and in 1966 Mr. Hoover stopped the practice. The statement with respect to the lack of cooperation and liaison between the FBI and the other agencies, I understand that—I do not really understand what is meant by it but in May 1970 FBI Director Hoover shut off his agency's liaison with the CIA altogether, in the Watergate investigation there was obvious liaison back and forth between the people.

I gather that on FBI memos there was a practice of circulating those to the Agency on an automatic basis; that is, copies went automatically to agencies outside of the Department of Justice. And I presume that Mr. Hoover stopped that practice.

Mr. WALDIE. Well, these seem to be the only justifications that the President gave for the Huston Plan, those two.

Mr. DOAR. That is correct.

Mr. WALDIE. All right. Thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. With respect to the so-called Huston Report on 21.1, I wonder if it would be feasible for the staff to explore with the committee from whom we obtained this, or the CIA or both, to see if we could get an edited version that would delete things that were of still a sensitive nature from an intelligence standpoint, so that we would have a document that we could work with. And we are going to have to do it sooner or later, it seems to me, because if we make available all of this material to the House, it is going to have to be, this is going to have to be included.

Mr. DOAR. The sensitive part of that material, according to the CIA, is contained in the first part of the document labelled the "Threat Assessment". And I think we can probably do that.

Mr. SEIBERLING. Well, there is a discussion about various foreign government connections with local groups, and I suppose maybe that could be sensitive, or revolutionary groups and so forth.

Mr. DOAR. It is the first 22 pages that we could summarize. After the 23d page it would not be a problem.

The CHAIRMAN. Would you continue, please, Mr. Doar.

Mr. DOAR. The answer for you is that is at 23.7, Mr. Owens.

Mr. OWENS. Well, what I was looking for was Mr. Haldeman at 23.2 says that, "The President does not want to follow the procedures you outline on page 4 of your memorandum." On page 4 of his memorandum is what I was looking for to see what changes the President wanted to make. That is what I cannot seem to locate.

Mr. DOAR. That internal memorandum we do not have. But, I think during the noon hour we can get the answer to that, if you will permit me to just defer that until after lunch. Tab No. 26.

Mr. GILL. In or around August 1970, H. R. Haldeman transferred White House responsibility for matters of domestic intelligence for internal security purposes from Thomas Charles Huston to John Dean.

On September 17, 1970, Dean and Attorney General Mitchell discussed procedures for commencing a domestic intelligence operation. On September 18, 1970, Dean wrote a memorandum to Attorney General regarding the establishment of an interagency domestic intelligence unit, and the use of an existing group called the Interdivisional Information Unit (IDIU) as a cover for the operation of the new unit.

Dean recommended that restraints should be removed as necessary to obtain needed intelligence rather than on a blanket basis. Dean informed Mitchell that Haldeman had suggested he would be happy to join Mitchell in a meeting with Hoover.

Mr. DOAR. Tab No. 27.

Mr. GILL. In or before December 1970, the intelligence evaluation committee was created to improve coordination among the intelligence community and to prepare evaluations and estimates of domestic intelligence.

Mr. DOAR. Tab 28.

Mr. GILL. In the latter part of 1970 the Secret Service installed a wiretap on the telephone of Donald Nixon, the President's brother, in Newport Beach, Calif., and also instituted physical surveillance.

Caulfield was assigned by Ehrlichman to monitor and report to him on the wiretap. Caulfield has testified that the purpose of the surveillance was the concern that Donald Nixon might be involved with persons seeking to use him for improper political influence, and thereby embarrass the President.

The President has stated that his brother was aware of the surveillance while it was occurring because he asked about it, was told about it and he approved it.

Mr. DOAR. These statements of the President are set forth at 28.2 from the President's news conference of November 17, 1973. Tab 29.

Mr. GILL. On February 10, 1971, in the month before Director Hoover was to appear before the House Subcommittee on Appropriations, the FBI terminated nine wiretaps from the 1969-71 electronic surveillance program which were still in operation.

Mr. DOAR. Tab 29.3 is another summary of these wiretaps in the period during which they were maintained.

We understand it was the practice of Director Hoover to terminate wiretaps, or as many wiretaps as he thought was justified to terminate just prior to the time he testified before the House Subcommittee on

Appropriations so that he would be in a position to testify as to a limited number of wiretaps then in operation. Tab No. 30.

Mr. GILL. In June 1971, Dwight Chapin, the President's appointment secretary and Gordon Strachan, an aide to H. R. Haldeman, recruited Donald Segretti to disrupt the campaigns of candidates for the Democratic Presidential nomination. Shortly thereafter, Haldeman met with Herbert Kalmbach and authorized Kalmbach to pay out of political funds Segretti's salary and expenses, which totalled \$45,000 during the next year.

Mr. DOAR. Material with respect to the employment of Mr. Segretti, the payment and the authorization by Mr. Haldeman is set forth in the tab behind this paragraph in detail.

This, Mr. Chairman, would be a good time to break for lunch because we now go into the special investigating unit known as the Plumbers at tab 31.

The CHAIRMAN. In light of the fact that we have a debate going on, and there will not be an interruption and record votes, I think it would be best if you could continue, and we might go for at least another hour.

Mr. DOAR. I do not know whether this next book will be ready. We can go through these next tabs.

The CHAIRMAN. Well, we should at least finish up these tabs. But, when will the next book be ready?

Mr. DOAR. It should be ready right after lunch. I cannot——

The CHAIRMAN. Could you have someone check now?

Mr. JENNER. It might be ready now.

The CHAIRMAN. Well, will you kindly check?

Mr. DOAR. Tab No. 31.

The CHAIRMAN. Mr. Doar.

Mr. WALDIE. What does tab 30 have to do with what we are dealing with?

Mr. DOAR. Well, later on there is, with respect to the activities of Mr. Segretti, there is some activity by high officials to cover up or not to disclose this activity, and that is all developed later on.

Mr. WALDIE. OK.

Mr. GILL. This was simply the first act in that story.

Mr. WALDIE. All right.

Mr. DOAR. Tab 31.

Mr. GILL. On June 13, 1971, the New York Times published the first installment of excerpts from the "History of U.S. Decision Making Process on Vietnam Policy," popularly known as the "Pentagon Papers." The Pentagon Papers, prepared in 1967 and 1968, at the direction of the Secretary of Defense, were based largely upon CIA, and State, and Defense Department documents classified "top secret."

On June 15, 1971, at the direction of the President, the Government instituted legal actions in an unsuccessful attempt to prohibit further publication of the Pentagon Papers material by the New York Times and by the Washington Post, which also had gained access to it.

On that day, at the request of Attorney General Mitchell, the FBI began an investigation to determine how the newspaper had obtained copies of the Pentagon Papers.

Mr. DOAR. Tab No. 31.5 is Mr. Hoover's letter to Mr. Haldeman dated July 6, 1971, in which he summarizes the FBI's investigation

to that date, and indicating first in the first paragraph that he had been asked by the Attorney General on June 15 to conduct all necessary investigations into the matter.

The last sentence of the letter on page 3 reads :

We are now proceeding with intensive investigation into all phases of this case, and you will be kept advised of our progress.

Paragraph 32.

Mr. GILL. Following the June 13, 1971, publication of the Pentagon Papers. Daniel Ellsberg publicly acknowledged copying and releasing the documents.

On June 28, 1971, Ellsberg was indicted in California on charges of unauthorized possession of Defense information and conversion of government property, the Pentagon Papers.

Mr. DOAR. Tab No. 33.

Mr. GILL. In the 2 weeks following the publication of the Pentagon Papers, the President met at various meetings with Haldeman, Ehrlichman, Kissinger, and Colson. According to Ehrlichman and Colson the participants at these meetings discussed the adverse effect of the publication of the Pentagon Papers upon national security and foreign policy, and considered the possibility that Daniel Ellsberg, identified as the probable source of the published papers, possessed additional sensitive information that he might disclose.

During this period, White House staff members were told by Assistant Attorney General in charge of the Internal Security Division that some or all of the Pentagon Papers had been delivered to the Soviet Embassy on June 17, 1971.

Mr. DOAR. The material behind this tab begins to set forth the memorandums between and the activities and actions of Mr. Ehrlichman and Mr. Colson with respect to the disclosure of the Pentagon Papers and the trial of Daniel Ellsberg, and the activities preliminary to and just immediately subsequent to the organization of the Plumbers unit, which is set forth and described in paragraph 34. Tab No. 34.

Mr. DENNIS. Mr. Chairman, I notice that 33.3, that memorandum from Colson to Ehrlichman says he knows there is truth to the report that some of these papers were delivered to the Soviet Embassy. Will our staff when they interview Colson ask him about that statement?

Mr. DOAR. Yes.

Mr. GILL. Mr. Dennis, in the deposition of Mr. Nissen, who was the chief prosecutor in the Ellsberg trial, he disclosed the fact that a grand jury in Boston investigated that allegation and could never determine whether or not it was true.

Mr. DENNIS. Well, I have no idea, of course, but I notice he makes that statement there, so that I feel that it should be inquired about.

Mr. McCLODY. May I just ask this for the record? Is it not a fact that all of the Pentagon Papers were never published?

Mr. DOAR. That is right.

Mr. McCLODY. Portions were never published?

Mr. DOAR. That is right. I think the members of the committee clearly are aware that the plea that Mr. Colson entered just the other day was to really obstruction of justice in that he deprived Mr. Ellsberg of a fair trial by activities that were contrary to the obstruction of justice statute.

Mr. DENNIS. This is a private memo at the time to Ehrlichman, and no particular apparent reason why he should be lying about it. He may well have been, but he says, "As you know, and I know, there is truth to it." So, I would like to see what he has got to say.

Mr. DOAR. Tab No. 34.

Mr. LATTA. Mr. Chairman, before we go on, Mr. Chairman. I am wondering why, Mr. Doar, we are passing over the affidavit of John Ehrlichman with regard to the fact that he points out on page 2 that he regarded Ellsberg as a fanatic and a known drug abuser, and in knowledge of very critical defense secrets of current validity, such as nuclear-deterrent targeting.

And on the next page says he believed that Ellsberg had Communist ties and was a part of a conspiracy. This is pretty important I think to the national defense of this country. Would you care to comment on that?

Mr. DOAR. Well, I did not intentionally intend to pass over it.

Mr. LATTA. I know you did not intentionally, but I want to call it to your attention.

Mr. DOAR. It deals with the statement of the affidavit of Mr. Ehrlichman with respect to this, and I think in moving along rather fast on this, I am not trying to pick out affidavits. There are a number of memorandums back and forth on this, Congressman.

Mr. LATTA. Well, this has never come to my attention before, and I do not know whether it has ever come to the attention of the American people. I just wonder whether or not you have investigated whether or not this man did have this information?

Mr. DOAR. We do not have any information that he, in fact, did. He said he did not.

Mr. LATTA. Well, he said a lot of things.

Mr. DOAR. Paragraph 34.

Mr. GILL. The President has stated that in the week following the publication of the Pentagon papers, he authorized the creation of a special investigations unit whose principal purpose would be to stop future disclosures of sensitive security matters, and that he looked to John Ehrlichman to supervise that unit. This unit became known as the plumbers.

Mr. DOAR. The letter from President Nixon to Judge Gesell on April 29, 1974, at 34.2 should be directed to the committee's attention.

In paragraph 3 the President states he considered the act of such disclosure most critical to national security—

And it was my intent, which I believe I conveyed, that the fullest authority of the President under the Constitution and the law should be used, if necessary, to bring a halt to these disclosures. I consider the successful prosecution of anyone responsible for such unauthorized disclosures a necessary part of bringing to an end this dangerous practice of making such unauthorized disclosures.

This letter was written on April 29, 1974.

Congressman Latta, in Mr. Ehrlichman's affidavit at page 3, there is the statement to the effect that he had checked, and this is tab 33.1, page 3 of the affidavit, the third full paragraph—

At about the same time, the Assistant Attorney General for Internal Security called me to advise that an intercept established that some or all of the papers had been delivered to the Soviet Embassy here. I told the President of this call.

Mr. HOGAN. Do we know who did that?

Mr. JENNER. The Assistant Attorney General mentioned is Mr. Mardian.

Mr. HOGAN. Who delivered it to the Soviets?

Mr. DOAR. We do not know that.

Mr. JENNER. Our information is only that stated in the affidavit.

Mr. DOAR. Paragraph 35.

Mr. SEIBERLING. Is an intercept a wiretap?

Mr. DOAR. Yes.

Mr. SEIBERLING. Thank you.

Mr. OWENS. Well, will we ask Mr. Mardian, Mr. Doar, to ascertain whether there is any truth to that?

Mr. DOAR. We will, although Mr. Gill has advised me, Congressman, that the grand jury in Boston tried to establish that and were were not able to establish it. Tab 35.

Mr. GILL. On June 23, 1971, Haldeman sent several projects to Strachan for implementation. One of the projects envisaged 24-hour surveillance of Senator Edward Kennedy. Caulfield and Dean objected to this project because of the risks involved, and the project was not implemented.

Strachan has testified that Dean told him that physical surveillance of Kennedy was, in fact, conducted on a periodic basis, and that Strachan received reports on Kennedy's activities.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. In view of this and other points that have been raised before, do we have any information or evidence as to wiretapping of Members of Congress?

Mr. DOAR. The testimony before the Foreign Relations Committee is that there were none.

Mr. MEZVINSKY. Testimony by whom?

Mr. GILL. Mr. Ruckelshaus and Mr. Richardson.

Mr. MEZVINSKY. Thank you.

Mr. DOAR. The next books will not be over until about 1:30. One of the reasons for this is that included in the material that we are going to furnish you this afternoon is the material that we just got from Judge Gesell and the grand jury material, and we had to Xerox and put that into the material.

The CHAIRMAN. The committee will recess until 2 o'clock.

[Whereupon at 12:35 p.m. the committee recessed to reconvene at 2 p.m. this same day.]

The CHAIRMAN. The committee will be in order. Mr. Doar.

Mr. DOAR. Tab 36.

Mr. GILL. Tab 36, on June 25, 1971, Colson sent a memorandum to Haldeman in which he analyzed in detail the political ramifications of the publication of the first installments of the Pentagon Papers and Government efforts to halt further publication. He considered among other things the political advantages which could accrue to the administration from the criminal prosecution of Ellsberg.

Mr. DOAR. Paragraph 36.1, this memorandum is dated June 25, 1971, which is 11 days after the New York Times had started to publish and shortly after Mr. Ellsberg had announced that he had been the

person that released the information. In page 2, the second paragraph—this is a very long memorandum. Members of the committee may well want to read it in full, but the second paragraph reads:

The prosecution of Ellsberg could have some positive benefits for us in that if he is really painted as a villain, the fact that he conspired with the press and the press printed the documents that he stole is bound to have a bad ruboff on the press.

This is the report of Mr. Colson to Mr. Haldeman, dated June 25, 1971.

Mr. JENNER. We have retyped the first page, Mr. Dennis, so it is the first page you will pick up in your book.

Mr. DOAR. Then down at the bottom of the page, the last sentence says: "It is worthwhile to paint an individual bad if it is part of the prosecution of a natural enemy like Ellsberg."

The paragraph that begins at the middle of the next page, "The heartland isn't likely aroused over this issue."

Then if you drop down a few lines, there is this sentence:

They do not understand the security issue. If on the other hand, we prosecute Ellsberg and it becomes a notorious trial, this could spark a major readily understandable issue and a strong public reaction with our natural constituency rallying behind us.

I am reading from—the first page is a recopied page. The second page is a duplicate of the recopied page.

Mr. JENNER. It is the first page of the memo. The second page is numbered 2. This particular page does not have a number because it is the first page. It is headed in boldfaced caps, "A. Where we stand today."

Mr. DOAR. I have figured it out and that page has just been filed wrong by the collators. That is page, 1, I think. If you will mark page 1 on that and put it in your books. I want to direct your attention to the page that starts on the top, "Where we stand today." Do all the members of the committee have that page? I am talking about the paragraph in the middle of the page. It is the last four lines of the middle paragraph.

If on the other hand we prosecute Ellsberg and it becomes a notorious trial, this could spark a major readily understandable issue and a strong public reaction with our natural constituency rallying behind us.

Then on Page 5, at the second full paragraph, just above "The Ellsberg prosecution" Mr. Colson writes:

We can be the ones that restored credibility, honesty and candor to government and the contrast to the prior administration is very dramatic and effective.

Then down two paragraphs more, referring to Daniel Ellsberg, he says "First of all, he is a natural villain to the extent that he can be painted evil."

Then on page 6, the bottom of the page:

The *Ellsberg* case, if pressed hard by us, will of course keep the issue alive. Developing the case factually of why the President changed the policies will continually bring the papers themselves back into the public spotlight.

Then I say parenthetically, if you go back to page 1, in the first cover page, you read Mr. Colson's characterization of himself in a memo to Haldeman:

I think you know that I am very impulsive by nature. I tend to plunge hard into the issue of the moment and like to join battle on every hot topic that comes along. In this case, however, because I feel that the issues are so profound I am in effect advocating what is for me a very uncharacteristic caution.

Then on page 8, the top paragraph:

In short, I think it is very clear that there are profound political implications, that this offers us opportunities in ways we perhaps did not initially appreciate, that we can turn what appeared to be an issue that would impair Presidential credibility into one that we can use by effective contrast to improve the credibility of this administration; and further, that it is a tailor made issue for causing deep and lasting divisions within the Democratic ranks.

Then at the last sentence of page 8, it says:

While I detest the term, this is one issue that calls for a full-fledged carefully thought out "game plan" that we pursue to the hilt.

Tab No. 37.

Mr. GILL. During the last week of June 1971, Haldeman and Ehrlichman directed Colson to recommend a person to be responsible for research about the publication of the Pentagon Papers. One of Colson's several candidates for this position was his friend, E. Howard Hunt, a retired career CIA agent.

Mr. DOAR. Tab 37.1 is Mr. Colson's testimony before the executive session of the Senate appropriations subcommittee on June 19, 1973, at page 447, Mr. Colson testified:

During the last week of June 1971, I was asked by Mr. Haldeman and Mr. Ehrlichman to recommend a person who might be assigned responsibility for the research involved in the Pentagon Papers publication—a person who could deal with all aspects of the controversy and who could coordinate White House staff activities. At that point, congressional hearings were anticipated on the matters covered by the Pentagon Papers.

Mr. Colson goes on to say that on July 2, he sent a memorandum recommending five or six people, one of whom was Mr. Hunt.

On page 448, he testifies how he and Mr. Hunt were both alumni of the same university and they had gotten to know each other in the early 1960's, and Mr. Hunt was an employee of the CIA.

Then 37.2 is a memorandum to Mr. Haldeman in which he says he has several candidates, but you see how Mr. Hunt heads the list.

Mr. DeLoach, mentioned in the second paragraph of the letter, is the same DeLoach who was No. 3 or 4 man in the FBI when he left in 1969.

Mr. McCLODY. Mr. Doar, may I inquire?

I notice in 37.3 that Howard Hunt describes his background as having been a spy and having performed a number of entries while working with the CIA.

Is that true? Was he really a CIA agent? I understand he never had anything but a desk job at the CIA and really did not take part in espionage or counterespionage activities as an agent. Have we ever verified whether he has—I think he has a tendency to boast about what a great spy he is, but did the CIA ever let him go out and spy?

Mr. DOAR. I do not know for a fact. I just know what he testified to. As the paragraphs tell, Congressman, he did seem to be on a fairly first-name basis with people over at the CIA.

Mr. McCLODY. Oh, yes.

Mr. DOAR. And he certainly had the——

Mr. McCLODY. I just wonder whether "CIA agent" is an accurate description. He does not even call himself a CIA agent. He calls himself an officer. I think it is rather significant.

Mr. DOAR. Mr. Helms refers to him in one place in his testimony as a covert agent and he was in the Bay of Pigs operation.

Well, anyway, Mr. Hunt's testimony at page 3662 at 37.3 says he retired from the CIA in May 1970. He said he earned two outstanding contributions to operations ordered by the National Security Council. He said he was engaged in intelligence, covert action, counter-intelligence operations, trained in the techniques of physical and electronic surveillance, photography, document forgery, surreptitious entry into guarded premises for photography and installation of electronic devices.

Then he indicates in the bottom paragraph how he was approached by Mr. Colson, special counsel to the President, to become a consultant. He said Colson said that the White House had need of the talents that he, Mr. Hunt, possessed.

Mr. Jenner calls my attention to that last paragraph which I did not read, in which he says he participated in many activities. Tab 36.

Mr. GILL. On July 1, 1971, Internal Security Division of the Justice Department sent a request to the FBI asking whether there was any electronic surveillance involving Daniel Ellsberg. According to the FBI, during the operation of the wiretap program authorized by the President in 1969, Ellsberg had been overheard 15 times on the telephone of Morton Halperin, one of the staff members of the NSC whose telephone was tapped. But no record of this overhearing was maintained in the regular files of the FBI.

Mr. DOAR. If you will look at 38.2, you will see the procedures which the FBI follows when it has somebody under surveillance. The Director of the Internal Security Division indicates that Daniel Ellsberg is under indictment and it is anticipated that his defense counsel will file a motion to produce all evidence obtained by electronic surveillance. They indicate that the procedure has been in effect for a number of years.

In the second page of that memorandum, they refer to an Attorney General's memorandum of July 14, 1969, with respect to the procedures that the Department had instituted against monitoring of defendants' attorneys or defense strategy conversations in connection with internal security cases. They instructed the Bureau that similar procedures should be instituted with respect to monitoring of future conversations of Ellsberg and any conversations between any two persons relating to defense strategy. At any rate, the Bureau reported back—no, that is another tab. We will come to it chronologically.

Mr. GILL. Tab 29, on July 1, 1971, Colson and Hunt discussed various aspects of the Pentagon Papers matter. On July 2, 1971, Colson sent a transcript of the recorded telephone conversation to Haldeman, with the recommendation that Haldeman meet Hunt.

Mr. DOAR. I think the committee members would want to examine the recorded tape conversation between Colson and Hunt on July 1, 1971, that is at 39.2. You will see that on July 2, 1971, Colson writes to Haldeman:

The more I think about Howard Hunt's background, politics, disposition, and experience, the more I think it would be worth your time to meet him. I had forgotten when I talked to you that he was the CIA mastermind on the Bay of Pigs.

Mr. SEIBERLING. Now we know.

Mr. DOAR. "He told me a long time ago that if the truth were ever known, Kennedy would be destroyed."

If you want to get a feel of his attitude, I transcribed a conversation with him yesterday on it. Needless to say, I did not even approach what we had been talking about, but merely sounded out his own ideas.

You have now the conversation beginning on 3878 and Mr. Colson is asking Hunt's judgment about the prosecution of Ellsberg. In this regard, some of the questions that are asked by Mr. Colson are as pertinent as the answers.

In the middle of the page, Mr. Colson says, right almost at the middle of the page, he asks a very short question, "Why avoid it?"

Mr. Hunt answers:

Well, I don't know. If there is a good clear case rather than a "iffy" one I certainly would go for it. I think that the temper of the country is certainly such that it is required. I think there is a great deal of dismay and concern among the, let us say, the silent majority, that is our principal constituency, that this hasn't been done, that it be expanded to include these people.

Then Mr. Colson says:

One question that occurs to me. This thing could go one or two ways. Ellsberg could be turned into a martyr of the new left (he probably will be anyway) or it could be another Alger Hiss case, where the guy is exposed, other people were operating with him, and this may be the way to really carry it out; we might be able to put this bastard into a helluva situation and discredit the new left.

As I say, this conversation runs off from this page into part of the next page where Hunt indicates that he would be willing to agree to take on this kind of an assignment if there were proper resources.

At the top of 3879, after he discusses resources, Mr. Colson says: "Then your answer would be we should go down the line to nail the guy cold?" Tab No. 40.

Mr. GILL. On July 6, 1971, Colson informed Ehrlichman that White House aide and speechwriter Patrick J. Buchanan, Haldeman and Ehrlichman's first choice to head White House efforts on the Pentagon Papers matter, strongly believed he was not the man for the job. Colson urged Ehrlichman to meet with Hunt.

On July 1971, Buchanan sent a memorandum to Ehrlichman recommending against the project because, while there were dividends to be derived from "Project Ellsberg," none would justify the magnitude of the investigation being considered. Ehrlichman forwarded this memorandum to Haldeman to read and return.

Mr. DOAR. Tab 40.2 is Mr. Colson's memorandum to John Ehrlichman in which he tells Ehrlichman that Buchanan does not believe that he is the man for the project. He says "I doubt that I am going to be able to persuade him. I think it will take something from you or the President."

Then he says:

We probably should also think carefully whether in this frame of mind, he is indeed the right person.

I have had a long talk with Howard Hunt who is dying to get with it and will drop everything if we ask him to. I really think you perhaps should spend a few minutes with him to assure yourself as to the kind of man we are getting.

Tab 40.3, the cover page there, shows the route memo from Ehrlichman to Haldeman with the note "please return."

Then the second is Mr. Buchanan's response to the Ellsberg project. If you see how he characterizes it on page 2, at the fourth paragraph, he says "This is not to argue that the effort is not worthwhile—but that simply we ought not now to start investing major personnel resources in the kind of covert operation not likely to yield any major political dividends to the President." Tab 41.

Mr. GILL. Effective July 6, 1971, Hunt was hired as a White House consultant and assigned the task of studying the Pentagon Papers and events leading up to American involvement in the Vietnam War. On the following morning, Colson introduced Hunt to Ehrlichman.

Mr. DOAR. Tab 41.1 is the pay records of E. Howard Hunt.

At 41.2, Mr. Hunt's testimony to the SSC, at page 3666, where Hunt is asked, in the brackets—

Can you describe your initial assignment under Mr. Colson?

Mr. HUNT. Mr. Colson instructed me to become the White House resident expert on the origins of the Vietnam War. At the same time, I had collateral responsibility for determining certain leaks of highly classified information which included the leaks of the Pentagon Papers.

Mr. DASH. Now, is it true, Mr. Hunt, that from the beginning of your employment, Mr. Colson asked you to collect what could be called derogatory information about Daniel Ellsberg?

Mr. HUNT. Yes.

Tab 41.6, Mr. Ehrlichman testifies on May 17—this is page 236. He is talking about Mr. Hunt's first day on the payroll. He says:

The reason for the visit was an introductory visit and to discuss the project which he was going to undertake which was to analyze the Pentagon Papers to determine whether they were complete or not, whether there were any distortions. He was drawing on his experience of 20 years in the CIA plus some research that he proposed to do to permit him to make that analysis.

There was a suspicion that the Pentagon Papers were not the complete story and that was to be his project. He was a researcher, basically.

Then at the next page, Mr. Ehrlichman continues:

There was a suspicion among some of the people in our administration that that had been an incomplete development of the subject matter; in other words, that it had been a very selective completion of documents.

This probably is a typo, for "compilation of documents."

Tab 41.7 is Mr. Ehrlichman's log, showing a meeting with Colson at 9 o'clock and then a meeting with Colson and Howard Hunt at 9:30. Tab 42.

Mr. GILL. On July 7, 1971, Ehrlichman called Gen. Robert Cushman, Deputy Director of the CIA, and informed him that Hunt had been asked by the President to perform special consultant work on security problems and that Hunt might be contacting Cushman sometime in the future for some assistance. Ehrlichman told Cushman he should consider Hunt to have pretty much carte blanche. Prior to the discovery of a transcript of Ehrlichman's conversation with Cushman, in February 1974, Ehrlichman testified that he could not recall this phone call, that he was certain the President did not instruct him to secure CIA aid for Hunt, and that it was not until July 24, 1971, that

the President gave him special authority to call on the CIA for assistance in connection with the work of the special investigations unit.

Mr. DOAR. The committee will remember in the Watergate inquiry, where in 1974, when the secretary was requested to go back into a file drawer in General Cushman's former office, they located a partial transcript of a telephone conversation. This conversation is at 42.1.

The first is the affidavit explaining how this transcript was located. You will note that the affidavit, on page 3, is dated February 5, 1974.

Then continuing on, you have the transcript of the telephone conversation. It is dated July 7, 1971. Mr. Ehrlichman calling General Cushman:

I want to alert you that an old acquaintance, Howard Hunt, has been asked by the President to do some special consultant work on security problems. He may be contacting you sometime in the future for some assistance. I wanted you to know that he was in fact doing some things for the President. He is a long-time acquaintance with people here. He may want some help on computer runs and other things. You should consider he has pretty much carte blanche.

Mr. MEZVINSKY. How did we get this? You got this from the CIA. Does the CIA just record things pro forma like this? What prompted the recording of a conversation from Ehrlichman to Cushman?

Mr. DOAR. My recollection is that General Cushman testified that with respect to some calls that he took there, his secretary transcribed the calls. Whether they were off a tape or whether she listened to the call, I cannot say. I believe that not all the calls were transcribed.

Mr. MEZVINSKY. Just certain ones?

Mr. DOAR. Just certain calls. But when he first testified, this, for some 7 or 8 months, this transcript was not available.

Mr. MEZVINSKY. Thank you.

Mr. DOAR. Tab 42.2 is the testimony around the end of July, which Mr. Cushman says he got a call on July 7 from Mr. Ehrlichman. Then he describes what the call was.

Mr. WALDIE. May I interrupt?

On 42.1 on that telephone transcript, there is a note that after the above telephone conversation, General Cushman called to alert him.

General Cushman called whom to alert? Who was the "him?"

Mr. DOAR. That was blanked out by the CIA.

Mr. WALDIE. What was blanked out?

Mr. DOAR. The name. It is the name of a person in the CIA.

Mr. WALDIE. I see. After "called", there was a name?

Mr. DOAR. After the word "called" there was a name.

Mr. WALDIE. Do you know who that was?

Mr. DOAR. Yes, we do.

Mr. WALDIE. Is that relevant to us in terms of our inquiry as to who is involved in the Plumbers?

Mr. DOAR. I do not really think it is, no. In the next paragraphs or so, we develop the persons whom Mr. Hunt had contact over there. It may be that person or not, but I think we could supply it if you wish.

Mr. WALDIE. I do not think I particularly care, as long as you have made the decision that it is not relevant to our inquiry.

Mr. DOAR. We did make that. In 42.3, Mr. Ehrlichman testifies that in the brackets—"Did you make a call for Mr. Hunt to the CIA shortly after you saw him?"

Mr. Ehrlichman testifies "Well, I cannot recall ever making such a call." This is July 1973.

Then if you go back earlier to May 30, 1973, tab No. 42.4, which is the testimony before the Subcommittee on Appropriations, Mr. Ehrlichman testifies at the top of the page, "I never did make a step to ask the CIA to do anything without the President having authorized me to do so in advance."

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. If for any reason the conversation from John Ehrlichman to General Cushman relative to Howard Hunt is relevant or material or becomes so, then the author of the affidavit who says he found that in the file drawer would become important, would it not, if you wanted to authenticate that as actually being what it purports to mean?

Mr. DOAR. Well, yes, it would.

Mr. DENNIS. OK.

Mr. EDWARDS. Also, Mr. Doar, referring to Mr. Waldie's question as to the above conversation, General Cushman called to alert him. Whoever that person is he had some knowledge for most of the conversation, while at the same time, during the same time Ehrlichman was denying that the call was made, and Cushman was stating that he really had forgotten who had called. But, all of the time there was a third party who had some knowledge?

Mr. DOAR. I do not believe General Cushman was stating he could not recall who called him. I think that that is on another call. That was a January call. In this call he testified that it was Mr. Ehrlichman. He had testified that it was Mr. Ehrlichman.

Mr. EDWARDS. He testified it was Mr. Ehrlichman, so there was a dispute, and all of the time, Cushman could have had a corroborating witness?

Mr. DOAR. That is right. That is right.

Mr. EDWARDS. But that witness was never interviewed?

Mr. DOAR. Not to my knowledge.

Mr. GILL. All other contemporaneous documents of minutes of a meeting of the CIA counsel the next morning and others of that time period, that corroborates General Cushman's version of the conversation.

Mr. HUNGATE. Counsel, this is just another small nit, but where they have a thing like that, if there is a name left out, it would help me if either you put in A or B or blank, because this made a complete sentence, and I just assumed Cushman then called back to Ehrlichman once the plan went into effect.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Did you state that you have not ascertained whether or not these notes were taken from a dictabelt, or whether or not people at the CIA that we have been reading documents of made dictabelts, because my next question—

Mr. DOAR. That is what I said. I said that.

Ms. HOLTZMAN. Do you think you can ascertain whether or not there are dictabelts of some of these conversations? I think that would be very helpful.

Mr. DOAR. Yes. We will.

Ms. HOLTZMAN. Thank you.

Mr. DOAR. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, sticking with that same page, the second line, or well, the first two lines, "I want to alert you that an old acquaintance, Howard Hunt, has been asked by the President to do some special consulting work."

Now, that is Mr. Ehrlichman making that statement. We do not have any log or any evidence that corroborates that statement.

Mr. DOAR. Well, as I just related on page 286, Mr. Ehrlichman testifies before the Senate committee that he never took a step to ask the CIA to do anything without the President having authorized him to do so in advance. And then on the next page he dates the authority from the President from the 24th of July when he was given the authority over the Plumbers. And he said at the middle of the page, "That meeting was held, Senator, as a result of the President having approved the general plan of operation, which he did on the 24th of July."

Mr. McCLODY. Mr. Chairman, may I ask this question? On the next page, you do not have it bracketed, but the general setup of the Plumbers seems to be described by Mr. Ehrlichman. In other words, Egil Krogh was placed as general manager, and he got his instructions directly from the President.

Now, I am wondering why you do not have a statement of information in that connection? I looked through the latter part and I do not see it there, and then as I recall, in the trial of Egil Krogh he denied, declined to implicate the President directly in his operation of the Ellsberg break-in. And I wondered why those statements of information, if they are statements of information, would not be appropriate in this volume?

Mr. DOAR. We are going to play a 12-minute tape, and maybe after that tape is played, that will explain. We have not, with respect to the meetings between high Government officials like Mr. Haldeman, Mr. Ehrlichman, Mr. Dean, where there have been recorded conversations, or edited conversations, made any statements of information with respect to those conversations, no orders, nor conclusions, nor decisions reached at those meetings. We have just presented the recording to you.

But, your suggestion, I will give that careful consideration.

Mr. McCLODY. You know, I sort of thought that when Bud Krogh testified, I thought, well, he is going to reveal something dramatic here, and I think there was sort of a feeling that well, he did not. And it was kind of significant I thought. But anyway, it is just a thought in passing. And I was looking for this and I did not see it.

Mr. DOAR. Then at the next testimony before the Committee on Armed Services on June 13, and this is at 42.5, Mr. Ehrlichman said at the middle of the page, line 10:

If, in fact, I called the General between July 7 and July 18 from California for help for Hunt, it must have been the first and only time I did so without Presidential direction, apparently at the request of someone else who phoned me or came to see me in California to ask me to do so. Such thing is possible, but not probable. My recollection was on the 7th, that the 7th was the day that Mr. Hunt met Mr. Ehrlichman and Mr. Colson in his office.

Tab No. 43.

Mr. SEIBERLING. Did you say this is a classified document?

Mr. GILL. My memorandum dated July 6, 1971, entitled "More

Pentagon Papers," Colson advised Ehrlichman that the Brookings Institution was conducting a study of American involvement in Vietnam; Colson characterized it as potentially another Pentagon Papers. According to Caulfield, a member of Dean's staff, Colson suggested that a fire be started at the Brookings Institution in the course of which the papers could be stolen.

Caulfield objected to the plan and reported his objections to Dean. On July 11, 1971, Dean flew to San Clemente and told Ehrlichman that the Brookings Institution plan should be abandoned. Ehrlichman caused the project to be canceled.

Mr. DOAR. Tab 43.3 is John Ehrlichman's testimony, and Mr. Ehrlichman's testimony is that it did come to his attention that there was an effort to either break in to the Brookings Institution or to firebomb the Brookings Institution, and he says that it came to his attention "because John Dean came to California."

And he said:

I can't vouch for the hearsay aspects. But he said that Caulfield told him that somebody else told him that I had authorized this thing, and that is hearsay so many times removed that it is very difficult to cope with. I can say very briefly I didn't authorize it.

Question. Do you know who authorized it?

Answer. No, I don't.

Did you ever look into who authorized it?

No, I didn't.

And what was he asking you to do about it?

Mr. Ehrlichman at the next page says:

Mr. EHRlichman. He was asking me to make sure that that didn't happen.

Mr. DASH. Did you?

Mr. EHRlichman. I believe I did.

Mr. DASH. How?

Mr. EHRlichman. By a phone call.

Mr. DASH. To whom?

Mr. EHRlichman. I can't recall, I'm sorry to tell you.

And then just ahead of the bracket: "And you cut it off, I believe?"

Answer: "I believe that did it. He" and that means Dean, "was just really looking for somebody to give him a little clout to his feeling that it shouldn't happen."

Mr. Caulfield's testimony is at 43.4 and it indicates that it was Mr. Colson who suggested this idea. Tab 44.

Mr. GILL. Between July 1 and July 11, 1971, Assistant FBI Director William Sullivan told Robert Mardian, Assistant Attorney General for Internal Security, that Sullivan had possession of the files and logs of the 1969-71 wiretaps, and that the taps were not entered in the FBI indices. Mardian has testified that Sullivan indicated to him that the files were extremely sensitive, that Sullivan was likely to be forced out of the FBI by Director Hoover, with whom he had disagreed on FBI policy, and that he desired to turn over the logs to Mardian so that Hoover couldn't use them against the White House.

On July 11, 1971, after seeking the advice of Attorney General Mitchell about what to do about the logs and files, Mardian flew to San Clemente, California on a military courier flight to report to the President.

Mr. DOAR. Tab 44.3 is Robert Mardian's testimony, and a third of the way down the page Senator Talmadge is questioning him,

and Mr. Mardian relates, and this is at page 2393, Mr. Mardian relates how he advised the Attorney General of this, and not having heard from the Attorney General, and having had several inquiries from Mr. Sullivan, he said: "Subsequent, on a Sunday, he got a call from the Western White House, either from Mr. Ehrlichman or Mr. Halde- man, and he says that the President would like to talk to him, and he should come out there on a plane."

And Senator Talmadge asked Mr. Mardian: "What did the Presi- dent tell you to do with the reports that Sullivan had?"

And Mr. Mardian answered: "He directed me to obtain the reports from Sullivan and deliver them to Mr. Ehrlichman." And he testi- fied then that he did do that.

Mr. GILL. It is one of the coincidences that the plane Mr. Mardian went on was the same flight that Mr. Dean went on about the Brook- ings matter in the previous paragraph.

Mr. DOAR. Tab 45.

Mr. GILL. On July 12, 1971, Robert Mardian met with the President and John Ehrlichman and related William Sullivan's concerns about the wiretap files and logs. The President directed Mardian to obtain the 1969-71 files and to deliver them to Ehrlichman. Mardian was also directed to verify that the copies of a summary sent to Kissinger and Haldeman were made secure.

Mr. DOAR. Tab 45.2 is Mr. Ehrlichman's testimony with respect to these wiretap logs. At 2533 Mr. Dash asks Mr. Ehrlichman: "Did you become aware of any wiretapping that took place at the request of the President and approved by the Attorney General in regard to that?"

And Mr. Ehrlichman said: "In regard to the SALT leak?"

And Mr. Dash said: "Yes."

And Mr. Ehrlichman said: "No."

Now, the SALT leak was a leak in the summer of 1971, the latter part of July, July 24, and Mr. Dash said: "Did you become aware of any wiretapping that was authorized by the President and also the Attorney General with regard to any particular leaks involving national security at this time?"

And Mr. Ehrlichman said: "The answer to your question, Mr. Dash, is yes. It was in relation to an investigation in 1971. Beyond that I cannot go."

"You say it did not relate to the SALT leaks?"

And he said: "No."

"Did you know anything about the so-called Kissinger tapes?"

He said: "Yes, I knew—I did not know at the time the details of the tapes: that is who was being taped, and the purpose, and the extent and so on. I knew generally that such a thing was going on."

And then he testifies on the next page that the 17 wiretaps, one of which was a wiretap on one of Mr. Ehrlichman's employees, and the reports, I think on these wiretaps Mr. Ehrlichman got 15 reports on these wiretaps in July through September 1969, and he also got the material with respect to the information secured from the wire- tap on Mr. Clifford in December 1969. And that came from another one of these 17 wiretaps.

And he says, Mr. Dash, at the top of page 2534: "Why did Mr. Mardian give them to you?"

Answer: "He gave them to me because he felt that they should be in the custody of the White House, and he proposed that they be moved out of the Justice Department because he could not assure their safe keeping there."

Tab No. 46.

Mr. WALDIE. At tab 45.3, the interview with the FBI and Robert Mardian, you have coded a name as Assistant Director of the FBI. What is the reason for that?

Mr. DOAR. We originally did that in preparing this material for the Department of Justice. I think that it was not really necessary. His name is Brennan.

Mr. WALDIE. What is his name?

Mr. DOAR. Brennan.

Mr. GILL. C. D. Brennan, B-r-e-n-n-a-n.

Mr. WALDIE. Thank you.

Mr. DOAR. Number 46.

Mr. GILL. On July 13, 1971, the Director of the FBI reported to the Assistant Attorney General, Internal Security Division of the Department of Justice, that a review of the records of the FBI reveal that no conversation of Daniel Ellsberg had been monitored by electronic surveillance devices.

On July 16, 1971, the FBI reported that there had been no direct electronic surveillance of Morton Halperin.

Mr. DOAR. The type of memorandum that came back, I think the request from the Department of Justice to the Director on Daniel Ellsberg, came about on the 2d of July, and the files were picked up by Mr. Mardian and moved to the White House on I think the 12th of July. And the memorandum from Mr. Hoover is dated the 13th of July. And the memorandum on Mr. Halperin, which was the tape with the overhearings in which Mr. Ellsberg was involved was reported on the 16th of July.

Mr. Gill says that the files were not physically moved on the 12th of July. The date of that we are uncertain of.

Mr. COHEN. Mr. Doar, on 46.1, the memorandum from the Director of the FBI, they make reference to Ellsberg not being monitored by electronic surveillance devices, nor the subject of direct electronic coverage. What is the difference between the two, from your experience? I ask this —

Mr. DOAR. Well —

Mr. COHEN. I ask this because under Subcommittee 3 of the Judiciary, we have also held hearings dealing with electronic surveillance, and the FBI has indicated it does not have any sophisticated monitoring devices other than the wiretap itself, or possibly a tape recorder carried upon the person. Do you have any information that would contradict that?

Mr. DOAR. No, I do not. I was under the impression, and maybe I was mistaken, but what they meant here was that they did not have a tap on Mr. Ellsberg's phone, nor did they overhear any conversation in which Daniel Ellsberg was a party on someone else's phone. But, that is—if they had overheard a conversation in which Daniel Ellsberg was a party, although it was not his phone, then they would have picked him up by monitoring by electronic surveillance. If there

had been a tap on him, then he would have been the subject of direct electronic coverage.

Mr. EDWARDS. But they heard Ellsberg on Halperin's tap 16 times.

Mr. DOAR. Yes, 16 times. Yes.

Mr. EDWARDS. So this is not a correct statement, this 46?

Mr. DOAR. No, no. This is an untrue statement.

Mr. SEIBERLING. Well, is it possible that they are making a distinction between a tape and a bug?

Mr. DOAR. No.

Mr. SMITH. Mr. Doar, tab 46, the last sentence, says, "On July 16, 1971, the FBI reported there had been no direct electronic surveillance of Morton Halperin." Under 46.2 the FBI, the report from the Director of the FBI seems to say conversations of Morton Halperin were monitored by electronic surveillance.

Mr. GILL. Congressman, there are two different statements made there. The first one is in the first paragraph of tab 46.2, or excuse me, the second paragraph, and it says: "A review of our records reveals that none of the above people," and the only name that has not been blanked out is Morton Halperin's, because the other names are unrelated to this. "that none of the above individuals had been the subject of direct electronic coverage."

And in the last paragraph it notes, however, in a coverage of some other place, Morton Halperin made two telephone calls to that place and happened to be monitored.

Mr. SMITH. Thank you very much.

Mr. HOGAN. You are saying records did show it at that time?

Mr. GILL. They showed those two telephone calls he made to another place that was monitored, but they reported that there was no direct coverage on him. It was not in the records, as you know from earlier.

Mr. HOGAN. But the statement says: "A review of our records reveals that no conversation," so are we saying that he is lying when he says that the records do not show that? Or is he lying, or are you saying that there were electronic surveillance devices? I mean, which is the lie, the records did not show or they did not take place?

Mr. GILL. These taps were not entered in the regular records of the FBI. Mr. Hoover signed the request for them to the Attorney General, and this memorandum is from Mr. Hoover, who is the one who requested those taps.

Mr. HOGAN. But what I am saying is the statement says, "A review of our records reveals that no conversations," and so forth. Do the records show that, or do they not?

Mr. DOAR. Yes; the records do show.

Mr. HOGAN. The records do show, so that is what is an error?

Mr. DOAR. Yes.

Mr. DRINAN. Mr. Chairman?

Mr. DOAR. Mr. Halperin was one of the 17 individuals that was tapped in that program that we discussed this morning. He was tapped for 22 months.

Mr. HOGAN. I understand that. But, the statement says, "A review of our records reveals that no conversation." That is the statement.

Mr. DOAR. The statement is untrue.

Mr. HOGAN. The records did show that?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. That is what he said.

Mr. RAILSBACK. Mr. Chairman?

Mr. DOAR. I understand.

Mr. HOGAN. Do you see what I am saying? The sentence itself says, "A review of our records reveals." Now, I am saying did the records reveal that?

Mr. DOAR. No, they did not.

Mr. HOGAN. Then it is not an erroneous statement.

Mr. DOAR. That is correct.

Mr. HOGAN. OK, so I do not think that we ought to call him a liar when the statement is correct.

Mr. DOAR. Well, I did not call him a liar.

Mr. HOGAN. You said the statement was untrue.

Mr. DOAR. I was talking about the statement at 46.1.

Mr. HOGAN. That is the statement I am talking about. That is what the tab relates to.

Mr. DOAR. We are talking about Daniel Ellsberg on 46.1, the first page.

Mr. RAILSBACK. Will the gentleman yield?

Mr. HOGAN. But he asked the question whether that was an erroneous statement, and you said yes, and it is not an erroneous statement.

Mr. DOAR. Well, Mr. Hoover was the man that authorized the tap.

Mr. HOGAN. I understand that. The statement says, "A review of our records fails to disclose." That is the statement, and is that a correct statement, or is it an incorrect statement?

Mr. DOAR. I think it is an incorrect statement.

Mr. HOGAN. Well, that is not what you just said.

Mr. RAILSBACK. Will the gentleman yield? Larry?

The CHAIRMAN. Go ahead, Mr. Railsback.

Mr. RAILSBACK. Am I correct, Mr. Doar, that some of these taps were kept in a different place other than the normal indices? And I think this is the conflict between the two of you. At one point, I think it was Ruckelshaus who said that he did have the logs and the records pertaining to some of these national security taps, and that, in other words, these were treated in a different way than the taps that were, even the taps which were authorized by the Attorney General, I believe. Were they not kept in two different places?

Mr. DOAR. Yes. Yes they were.

Mr. RAILSBACK. And I think, as I understood Mr. Hogan, Mr. Hogan is saying that a review of the FBI records might not reflect those certain national security taps.

Mr. SARBANES. Would the gentleman yield?

Mr. RAILSBACK. Yes.

Mr. SARBANES. As I understand it, this memo had come not from the Director of the FBI, but from subordinate who had checked the normal statements and files, the statement might have been accurate. But, you have the statement made here by the same person who authorized the taps and kept the other records.

Mr. McCLORY. If the gentleman will yield, if you reread the entire sentence, he goes on further and he says, in addition to the records not showing it, he says, nor has he been the subject of direct electronic coverage.

Mr. HOGAN. Could I ask a question? Mr. Doar—

Ms. JORDAN. Regular order.

Mr. DRINAN. Regular order.

Mr. WIGGINS. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman, may I ask a question, please?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, looking at 46.1, I am first impressed by the apparent routine nature of the memorandum. It is not signed by the Director, although it is from, apparently, the Director of the FBI. Do you know whether or not the request was stimulated by the kind of demand that probably was made by defense counsel to the U.S. Attorney out in Los Angeles in connection with the trial, and that that demand resulted in the processing of an in-through-channel request to the FBI to determine whether or not the Government was in possession of taps affecting that trial? Is that a likely genesis of this document?

Mr. DOAR. Well, that is either that, or it is the Internal Security Division prosecutor anticipating such a request and asking them to check their files.

Mr. WIGGINS. Well, I would assume, but I do not know. I would assume that there are many such requests, almost in every organized crime prosecution where you expect defense counsel to make that kind of request. Do you know whether or not this particular request was handled in a routine sort of way, or whether it does represent the personal judgment of the Director of the FBI that the statements contained here are true to his knowledge?

Mr. GILL. Mr. Wiggins, the people at the Justice Department that brought us this document, frankly, said that they were disturbed about the fact that it came from the Director, and that the FBI was instituting an internal investigation to answer the sort of questions you have asked. And if they produce a report of that, they will furnish it to us.

Mr. WIGGINS. I see. In the normal case I have talked about, it would normally come from the Director as this?

Mr. DOAR. It would come from the Director.

The CHAIRMAN. I do not think there is any point in belaboring it. I think the memorandum supports what the tab says, and I do not think we can go beyond it.

Mr. HOGAN. May I make one brief observation, Mr. Doar?

Mr. DRINAN. Regular order.

Mr. HOGAN. Is it not true that all memorandums from the FBI to the Department come from the Director of the FBI?

Mr. DOAR. Yes.

Mr. HOGAN. Well, then, there should be nothing read into this that J. Edgar Hoover personally approved or dictated this memo.

The CHAIRMAN. I do not think we have to comment on that. The memorandum is in the file, it is there, the memorandum from the FBI, and you can read into it whatever you want.

Mr. Doar, will you proceed?

Mr. WALDIE. Mr. Chairman? Mr. Chairman? May I ask a question on the tab?

The CHAIRMAN. Go ahead, Mr. Waldie.

Mr. WALDIE. Mr. Doar, on tab 46.2, a memorandum from the Director to the Assistant Attorney General, the telephonic requests that initiated, I guess, this information was to Mr. Brennan, that Director's name, the Assistant Director from a Mr. Olsen on July 9. Mr. Olsen is a deputy to Mr. Mardian?

Mr. DOAR. Yes.

Mr. WALDIE. And Mr. Mardian flew to San Clemente on July 11?

Mr. DOAR. Yes.

Mr. WALDIE. On April 9 Mr. Mardian's deputy was asking whether there was information involving electronic surveillance of Ellsberg?

Mr. DOAR. No, he was asking about Halpern on July 9.

Mr. WALDIE. But Halperin records were among those that Mardian was flying to San Clemente to determine what to do with?

Mr. DOAR. Yes.

Mr. WALDIE. And do we have any information as to whether Olsen knew, or as to whether Mardian knew, that Olsen was making this request of July 9?

Mr. DOAR. No.

Mr. WALDIE. We don't?

Mr. DOAR. No.

Mr. WALDIE. Would it be possible for Olsen to have made the request without Mardian having any information about it, or would Olsen's request have precipitated Mardian's flight?

Mr. DOAR. I cannot answer that.

Mr. WALDIE. All right.

Mr. HUNGATE. Mr. Chairman, may I have 1 minute here? I am still hung on 46.1.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. As I understand from this, the statement says the record reveals, 46.1, no conversation monitored and so on. Now, as I understand it from other sources, the Director had authorized such taps. Now, I would suppose it is possible that you could authorize taps, as many as they authorize, and some would never be made, and in those cases, then the records would not reveal it, they would be made, and it would be possible the taps were made and the records were never kept at the FBI. Is it possible these are among the records that Mr. Sullivan had?

Mr. DOAR. They were among them.

Mr. HUNGATE. That is where they are, and that is why he does not know it. Mr. Hoover, in his records, because it did not get there? I mean, it did not get in the regular course of his records?

Mr. DOAR. That is correct.

Mr. HOGAN. Would the gentleman yield?

Mr. HUNGATE. I yield.

Mr. HOGAN. The point is that the Director probably never saw the memo.

Mr. HUNGATE. I understand the point you make.

Mr. HOGAN. Because all memos from the FBI to the Department came from the Director after a file check.

Mr. SMITH. One question, Mr. Chairman. At 46.1, were there taps made on Daniel Ellsberg?

Mr. DOAR. No.

Mr. GILL. He was overheard on Halperin's telephone on 15 occasions, but there was no tap on him as such, no direct coverage.

Mr. SMITH. I understand. I thought Mr. Hungate was inferring there were taps on Ellsberg.

Mr. HUNGATE. But the records, if I may refer to the gentleman from Alabama, there were records of the pickup from Halperin?

Mr. GILL. Yes.

Mr. HUNGATE. All right. Thank you.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Mr. DENNIS. Well now, Mr. Doar—

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I just have a question on the bottom of the memorandum at 46.2. You blocked out apparently the names of offices at which electronic monitoring took place. Can you tell me the reason for that? Were these national security monitorings?

Mr. DOAR. Yes, they were.

Ms. HOLTZMAN. Of offices?

Mr. DOAR. They were national security, and it was blocked out for national security reasons.

Ms. HOLTZMAN. Are these authorized wiretaps?

Mr. DOAR. They were—

Ms. HOLTZMAN. Court orders?

Mr. DOAR. They were national security wiretaps.

Ms. HOLTZMAN. Of offices or of people?

Mr. DOAR. They were national security wiretaps.

The CHAIRMAN. I do not think you can go beyond that.

Ms. HOLTZMAN. Well, it may be relevant to the inquiry as to the extent of these wiretaps. That is why I was asking whether it was of office buildings or it was of people. Thank you.

Mr. DENNIS. Mr. Doar—

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. It might help, Mr. Wiggins and others of you, tab 46.1 is a response to tab 38.3. Keep that in mind, or no, 38.2. I'm sorry. That is the request to which 46.1 is the response, and the request is directed to the Director of the Federal Bureau of Investigation.

Ms. JORDAN. Mr. Chairman, I was going to ask—

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. I was going to ask Mr. Doar what is in the rest of this book.

Mr. DOAR. Tab 47.

Mr. GILL. On or about July 17, 1971, Ehrlichman assigned Egil Krogh, a member of Ehrlichman's staff, and David Young, who was then serving on the staff of the National Security Council, as co-chairmen of the special investigations unit.

Mr. DOAR. Tab 47.1 is Egil Krogh's affidavit. The blocked out part indicates that he received this assignment orally from Mr. Ehrlichman on July 15. And then on the next page, paragraphs 9 through 11, he relates how he recommended to Mr. Ehrlichman that Gordon Liddy be employed by the special unit as an investigator and a staff assistant, and how Mr. Ehrlichman subsequently authorized the employment of

Mr. Liddy, that E. Howard Hunt to affiant for assistance on the Pentagon papers investigation, and such recommendation was made to affiant over the telephone by Mr. Charles C. Colson.

Mr. Ehrlichman's affidavit at 47.7, page 6 of his affidavit, relates how on July 17 he told Young and Krogh of the foregoing events, of the President's sense of urgency and his assignment.

Tab 47.2 is where they immediately returned to Washington, assimilate all current facts, decide how to stimulate the various government units to plug future possible leaks, to decide how to move the Justice Department's Ellsberg conspiracy investigation to early and successful conclusion, and be prepared to work directly with the President "at his option or through me if they needed help."

Tab No. 47, or paragraph No. 47.4 is Mr. Haldeman's testimony.

Mr. DENNIS. Mr. Doar, wait a minute. On 47.1, Egil Krogh's affidavit, paragraph 15, bottom of page 2, affiant was informed by the FBI that the so-called Pentagon Papers were in the possession of the Soviet Embassy prior to their publication by the Times. Is there any further information about that situation?

Mr. DOAR. No, there is not. The grand jury in Boston, as I said, were not able to resolve that.

Mr. DENNIS. Well, was Mr. Krogh interviewed on that subject, and was the FBI interviewed on that subject? He makes the statement here that the FBI told him this.

Mr. DOAR. Mr. Krogh was interviewed, and he said that the FBI could never establish that the source of this information was reliable.

Mr. DENNIS. Well, did he indicate his FBI source, the person who told him?

Mr. DOAR. No, not that I know of.

Mr. DENNIS. So as far as you know, nobody ever went back to the FBI to see what basis, if any, they had for the statement?

Mr. DOAR. My understanding was the FBI said they could not, they could not attest to the reliability of their source.

Mr. DENNIS. Mr. Krogh ought to know who over there he was talking to. You could go back and talk to the FBI agent and see where you went from there, if anywhere. What I am trying to find out is was it done or will it be done?

Mr. DOAR. I do not know about that.

Mr. SEIBERLING. Mr. Chairman, may we have an explanation as to materiality of this line of questioning?

Mr. DENNIS. Well, yes, I will say to the gentleman from Ohio, since he raises the question, that I have some doubt or question, or wonder in my mind about the materiality of a good deal of what we have been going into today. But, I would respectfully submit that if it is material at all, the fact, if it be a fact, that we are really in the national security area, and that the Russians might be involved and so on, would be a very highly material part of the whole picture. And it seems to me that if we are going to go into this, that that is a part that ought to be exhausted as far as we can do so.

Mr. SEIBERLING. But the matter was all published in the paper shortly thereafter.

The CHAIRMAN. I think this was a subject of intensive investigation by the FBI, and I am sure it was resolved there.

Mr. DENNIS. Well, I have a lot of confidence——

The CHAIRMAN. I think all counsel can respond to is what they have in their possession now, and they made an exhaustive and thorough, I am sure, study.

Mr. McCLORY. Mr. Chairman?

Mr. DENNIS. Mr. Doar, I am sure would be glad to follow this thing up. I think he indicated to me a minute ago that he would be glad to. That is all I am suggesting.

Mr. DOAR. Well, I will do that. My cocounsel at the table are saying to me that you ought to tell Congressman Dennis that they do not think we are going to get anywhere with it.

Mr. DENNIS. Well, that could be. I can understand that. We have not gotten anywhere on a number of places. That is the way investigations go.

Mr. McCLORY. Mr. Chairman, I would like to point out to the gentleman from Ohio, all of the Pentagon Papers have never been published, and if, in fact, the Pentagon Papers, including the unpublished parts, were delivered to the Soviet Embassy, that would be a material element here, and if the FBI knows about that, or does not know about it, it would be an important element for us to have.

Mr. SEIBERLING. Well, but there is no claim that the Plumbers were going to try——

The CHAIRMAN. Why don't we stop speculating, and if it is possible to get that information, Mr. Doar, why maybe we might satisfy the questions.

Mr. DOAR. Paragraph 48.

The CHAIRMAN. Of course, we have got to remember if this is the way this inquiry is going to go, that we could go on here interminably.

Mr. DENNIS. Mr. Chairman, may I make one short observation?

Mr. RANGEL. Regular order.

Mr. DENNIS. In response to the gentleman?

The CHAIRMAN. We will just proceed now. The gentleman is called out of order.

Mr. DENNIS. Well, OK, Mr. Chairman. I get called out of order every time I speak.

The CHAIRMAN. Well, only because the gentleman is out of order.

Mr. DENNIS. Well, I disagree with the Chairman.

The CHAIRMAN. The gentleman will be in order.

Mr. DOAR. Paragraph 48.

Mr. GILL. In the week following July 17, 1971, Krogh recruited Gordon Liddy, an ex-FBI agent, for the special investigations unit, and Colson instructed Hunt to report to that unit. Office space, equipped as a high security area, with a special alarm system and a scrambler telephone was made available in the Executive Office Building.

Mr. DOAR. Tab 49.

Mr. GILL. During the period from July 1971 to December 1971, Ehrlichman authorized Gordon Liddy to conduct an unspecified number of wiretaps on persons whose names have not been disclosed.

Mr. DOAR. This information, we have as yet not been able to get any further information with respect to these particular wiretaps. No. 50.

Mr. GILL. Charles Colson's responsibilities with respect to the spe-

cial investigations unit was to disseminate the information obtained by the unit. In this connection, Colson prepared memoranda to Ehrlichman concerning efforts undertaken to encourage Congress to hold hearings on the Pentagon papers matter.

Mr. DOAR. Mr. Hunt's testimony at 50.2 indicates that dissemination to the newspapers with respect to Daniel Ellsberg was one of the objectives. Mr. Ehrlichman's testimony at 50.3 was to the fact, and this is at 2670, that there was in the White House a desire to air this whole thing once the facts were known.

In 50.5 is Mr. Colson's memorandum to Mr. Ehrlichman on the 14th of July with respect to a Bill Hecht. And at the end of the first paragraph he talks about how "Mr. Hecht was very much in sympathy with what we would like to do with the Ellsberg conspiracy issue."

And in the second paragraph he said:

The purpose of the meeting was to explore with Hecht whether he could act as the principal coordinator from the Hill end on the Ellsberg operation. He would be the contact through whom Hunt would feed material.

And at the last paragraph, or the second to the last paragraph, Mr. Colson said on the next page:

I think what is urgently needed is an assessment of how good our information is, and how effective we think we can be in putting our case together.

Paragraph 50.7 is another memorandum from Mr. Colson to Mr. Ehrlichman, and then we come to paragraph 51.

Mr. GILL. On July 22, 1971, Howard Hunt met CIA Deputy Director Cushman and asked for CIA aid in connection with an interview Hunt was going to have with an unidentified person. The CIA provided Hunt with, among other things, material for physical disguise, and voice alteration, and "alias" identification in the name of Edward Warren. The material furnished to Hunt was intended to be used by him to interview one Clifton DeMotte, who was believed to have information reflecting unfavorably on certain members of the Kennedy political groupings.

Mr. DOAR. Tab 51.2 is a tape of a telephone recorded conversation between General Cushman and Hunt. If you notice the first page of that, which is page 3383, in the fourth line, Mr. Hunt says: "I have been charged with quite a highly sensitive mission by the White House to elicit information from an individual."

And then he goes on, and then if you turn to page 3385, General Cushman in the middle of the page tells Mr. Hunt Mr. Ehrlichman has called him. And then at 3388 at the bottom of the page, Mr. Hunt makes reference, oblique reference to the Pentagon papers matter.

It is in the fourth line from the bottom, and describing how things are working out at the White House.

Mr. SARBANES. What are the blanks on that page, 3385? I notice there are others, there are some in other parts of this transcript.

Mr. DOAR. Those blanks were excised at the request of the CIA for publication in the SSC hearings, transcripts. We have access to a more complete transcript.

Mr. McCLORY. On this tab 51.2 at the top, it is described as a transcript of the telephone conversation, which it is also in the index. Then the title of the exhibit says "Meeting Between Cushman and Hunt." Is it a meeting or a telephone conversation?

Mr. DOAR. It is a meeting. Our description is inaccurate.

Mr. COHEN. What do the parentheses mean in there? They do not make any sense.

Mr. DOAR. I do not know.

Paragraph 51.4 is the affidavit of the CIA employee describing how General Cushman told him Mr. Hunt needed some physical disguise material and how he helped Mr. Hunt secure it.

Tab 51.5 is a second affidavit by a CIA official, how on July 23, he furnished the material from the CIA to Mr. Hunt. Paragraph 52.

Mr. WIGGINS. Mr. Chairman?

Could you please cite me to the tabs dealing with the last sentence on this item? I was not able to find it.

Mr. DOAR. Tab 51.3.

Mr. WIGGINS. Thank you.

Mr. DOAR. Tab 52.

Mr. GILL. On July 24, 1971, commencing at 12:36 p.m., the President held a meeting with Ehrlichman and Krogh. The day before, the New York Times had published a story revealing details of the U.S. negotiating position in the strategic arms limitations talks then in progress. At the July 24 meeting, there was a discussion of efforts to identify the source of the SALT leak and the use of a polygraph on State Department personnel suspected of being the source of the leak.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Doar, in view of the forthcoming tape, I wonder if you or some of the others could give some description of what the announced policy of the administration was at that time with regard to SALT so we could make some judgment as to whether the Beecher article in the New York Times was seriously compromising them.

Mr. DOAR. I am not able to give you that information. I just do not know the public position of the administration at this time as contrasted to what is in the article. But we will—I do not believe any of my associates do, either. But we will get that for you. I am sorry that we do not have it now.

The CHAIRMAN. You would have to find that in some document or something. I mean you would not be competent to tell what the administration position was at that time.

Mr. DOAR. That is true; we would have to find it from some document. But I think it was a public position; it was a public position.

The CHAIRMAN. Well, if you have that available, then I am sure you will report it.

[Whereupon, a tape recording of a meeting among the President, John Ehrlichman, and Egil Krogh on July 24, 1971, from 12:36 to 12:48 p.m., was heard.]

Mr. McCLORY. Mr. Doar, could I ask this? What is the offense of leaking this information? Is that a criminal offense, at a time when we are negotiating a treaty, to leak our fallback position? It is not treason?

Mr. DOAR. Disclosure of classified information, criminal statutes relate to the disclosure of classified information.

Mr. McCLORY. Is the newspaper liable to that punishment under that statute?

Mr. DOAR. The *Sullivan* case held, the case against the New York Times in the Pentagon papers, held that there were criminal statutes that could be applied if the proof was there against the publisher of the document that was released or turned over or taken.

Mr. McCLODY. There were never any proceedings instituted against the New York Times or any individual?

Mr. DOAR. There was, yes, there was a proceeding against—you mean with respect to this matter?

Mr. McCLODY. Yes.

Mr. DOAR. No.

Mr. McCLODY. What about Van Cleve? Nothing came of that?

Mr. DOAR. The last report that we have seen is that the administration was not successful in finding the source of that leak.

Mr. McCLODY. Thank you.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

This refers a bit to the point I was trying to make a while back, and I would like to say, Mr. Chairman, I regret getting cross with you. I did not mean to do that.

But the point I was trying to make I feel was a valid one. Of course, it would be a serious crime if anything were leaked to the Russians. Now, I understand that is a hard thing to find out. But it is not merely whether in fact it happened. It seems to me it is important in our context here if Krogh and these other people who were involved thought it happened or it was reported to them that it happened on credible information, such as the FBI. It bears on their intention and purpose, and it seems to me, if this field is relevant at all, that the basis on which they were operating and the type of thing which affected their frame of mind and so on is relevant and it is for that reason that I felt the matter should be inquired into.

Thank you, Mr. Chairman.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Doar, have you seen any evidence that the Plumbers unit was attempting to investigate this matter of the supposed transmittal of the Pentagon papers to the Russians?

Mr. DOAR. When you say "evidence," I—

Mr. SEIBERLING. I mean have we any evidence that that was one of the things they were trying to find out?

Mr. DOAR. None of the contemporary memorandums indicate that.

Mr. SEIBERLING. Well, then, this whole business about whether the FBI knew who gave the information is really immaterial to the point that is before us, as I see it.

Mr. SMITH. In this area.

The CHAIRMAN. Mr. Doar, I do not think there is any question before you. Will you proceed?

Mr. DOAR. Tab 53.

Mr. GILL. Following the meeting among the President, Ehrlichman, and Krogh, the special investigations unit conducted an investigation of the SALT leak and received the assistance of the CIA in obtaining polygraph equipment and operators.

Mr. DOAR. Tab 54.

Mr. GILL. Sometime prior to July 27, 1971, Young asked the Director of Security of the CIA to have a psychological profile of Ellsberg prepared. The project was personally authorized by CIA Director Helms. Young told both Helms and the CIA Director of Security that it was Ehrlichman's wish that the CIA undertake the project. By memorandum dated July 27, 1971, Young and Krogh advised Ehrlichman that preparation of the profile was underway.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Was Ellsberg under indictment at this point?

Mr. DOAR. Yes.

Tab 54.1 is Richard Helms' testimony before the Committee on Foreign Relations in which he testifies, at page 62, that he undertook this psychiatric evaluation with great reluctance, that David Young had asked him to do it, and he said, "We really didn't have any information on Dr. Ellsberg, we didn't know anything, and it would be very difficult."

Then on the next page he says:

I again pointed out to him this would be a most difficult thing to do, and I did not really see any reason why we should become involved in it, and he said this was a matter of a study of the Pentagon Papers' leaks and various other leaks, that it was a multifaceted approach and he felt it very important, and Mr. Ehrlichman did, that this be undertaken.

So I reluctantly said "Alright, let's go ahead and try it."

The only other psychological profile that was made of a U.S. national was one other, and it was made as Mr. Helms testifies to on the bottom of page 43.

Tab 54.2 is the affidavit of one of the CIA employees with respect to this profile. Tab 54.3 is Mr. Young's memorandum to the effect that this psychiatric study should be done. You see behind that another of the type of questions that they were following up on in connection with the *Pentagon Papers'* case.

Then Mr. Helms testifies again and says this profile, Mr. Ehrlichman regarded this as his highest priority. That is at tab 54.4, page 3235. Tab No. 55.

Mr. GILL. Hunt sent a memorandum dated July 28, 1971, to Colson entitled "Neutralization of Ellsberg." Hunt proposed the building of a file on Ellsberg to contain all available overt, covert, and derogatory information in order to determine how to destroy Ellsberg's public image and credibility. Hunt suggested that Ellsberg's psychiatrist be obtained. Hunt suggested a CIA psychological assessment/evaluation on Ellsberg. Colson has testified that he forwarded Hunt's memorandum to Krogh.

My memorandum dated August 3, 1971, Young reported to Colson that the psychological profile and certain other items mentioned in Hunt's memorandum were already underway and that the other suggestions in Hunt's memorandum were under consideration.

Mr. DOAR. Tab 55.2 is the memorandum of July 28 of Hunt to Colson, entitled "Neutralization of Ellsberg." Hunt sets forth, as he says:

I am proposing a skeletal operations plan aimed at building a file on Ellsberg that will contain all available overt, covert, and derogatory information. This basic tool is essential in determining how to destroy his public image and credibility.

Tab 55.2 is Colson's memorandum in which he sets forth that he had these suggestions from Mr. Hunt and he took the memorandum over and forwarded it over to Mr. Krogh.

Then 55.4, is Mr. Krogh's and Mr. Young's response to Mr. Colson with respect to this memorandum on the neutralization of Ellsberg. They report: "We already have in train the following projects mentioned in the Hunt memorandum."

Tab 55.5 is the information that was just recently filed against Mr. Colson, to which he pleaded guilty.

In paragraph 2, I direct your attention to the following:

On or about June 28, 1971, and for a period of time thereafter, in the District of Columbia and elsewhere, Charles W. Colson, the Defendant, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal trial of Daniel Ellsberg under indictment in the case of *United States v. Russo*, Criminal Case No. 9373, U.S. District Court, Central District of California, by devising and implementing a scheme to defame and destroy the public image and credibility of Daniel Ellsberg and those engaged in the legal defense of Daniel Ellsberg, with the intent to influence, obstruct and impede the conduct and outcome of the criminal prosecution then being conducted in the U.S. District Court for the Central District of California.

3. The aforesaid scheme by Charles W. Colson, the defendant, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal prosecution of Daniel Ellsberg consisted of the following acts:

(1) In July and August 1971, the defendant, and others unnamed herein, endeavored to and did release defamatory and derogatory allegations concerning one of the attorneys engaged in the legal defense of Daniel Ellsberg for the purpose of publicly disseminating said allegations, the known and probable consequences of which would be to influence, obstruct, and impede the conduct and outcome of the criminal prosecution of Daniel Ellsberg.

Paragraph 2 of the indictment also relates—this bracket inadvertently was in the wrong place. It relates to another item of the proof. The pertinent information here is that:

In July and August 1971, the defendant, and others unnamed herein, endeavored to obtain, receive and release confidential and derogatory information concerning Daniel Ellsberg, including information from the psychiatric files of Daniel Ellsberg, for the purpose of publicly disseminating said information, the known and probable consequences of which would be to influence, obstruct, and impede the conduct and outcome of the criminal prosecution of Daniel Ellsberg.

Then 55.6 is the transcript of the proceedings that took place in court when Mr. Colson pled guilty. Mr. Merrill relates to the court that the scheme began shortly after June 28, 1971—this is on page 5—which was the date of the indictment against Daniel Ellsberg. Then he says:

Shortly after the indictment, our proof would show, that if these charges were to go to trial, that Mr. Colson, in a conversation with another individual, indicated his desire to see that Mr. Ellsberg be convicted and stated that the charges against Mr. Ellsberg should be tried in the newspapers.

Sometime shortly thereafter questions were raised in Mr. Colson's presence regarding the ethics of such an attempt * * * Despite these questions, Mr. Colson proceeded with this scheme to gather such information, knowing full well that the natural and probable consequences of such activity could have an adverse effect upon the trial.

Then the recitation continues with respect to matters that we take up in the middle—following the month of August.

Following that appearance in court, Mr. Colson pled guilty.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. May I go back to one point on 53.3. On the second page of this memo, it is indicated that in the Beecher affair, "Stewart conducted some interviews, some persons were put under polygraph at State Department, the FBI entered the case. Many DOD people were questioned. The matter was not resolved. Nevertheless, Beecher is now"—that was on July 24, 1973—"serving as Deputy Assistant Secretary of Defense for Public Affairs."

I take it, therefore, that Mr. Beecher apparently committed no crime in the leak about which we heard the tape.

Mr. DOAR. No, there has been no——

Mr. DRINAN. Is Mr. Beecher still in that position, do you know?

Mr. DOAR. Yes, he is.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Do we have anywhere in our record the number of wiretaps that were conducted by Mr. Liddy? In the testimony, I think it was Mr. Ehrlichman who indicated that Mr. Liddy did have that type of authority.

Mr. DOAR. We do not have the number. We know that there were wiretaps, of course, at the Watergate.

Mr. RANGEL. Do we have a series of all of these wiretaps in any one place that were conducted? We know that there are 17 that were authorized. Then there are a series of others involving the Plumbers unit. Do we have those with names?

Mr. DOAR. No, we do not.

Mr. RAILSBACK. Mr. Chairman.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Doar, I wonder if it is not important that somewhere, we incorporate in these papers that we have gone over today possibly the relevant parts of the transcripts or the edited transcripts that relate to the President's knowledge about the Ellsberg break-in? In other words, it is my recollection—it may have even been in some of the tapes that we have heard—that it was fairly clear, if the tapes are accurate and reflective, it is fairly clear that the President did not know much about the Ellsberg break-in—he did not know anything about it. Also, he made a statement like it was such a stupid thing or something like that?

In other words, it seems to me that might be relevant in this, as long as we are concerned about the possible Presidential involvement.

Mr. DOAR. We do have all that material for you in subsequent parts of this presentation.

Mr. RAILSBACK. Oh, is it? Good. Thank you.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I would like to ask Mr. Doar, on the very last page in the book, page 6, was that the last page of the proceedings? It does not seem to be very determinative. I wonder what has been left out, if anything?

Mr. DOAR. That is not the last page. The rest of it will appear in subsequent paragraphs that we will present to you.

Mr. MAYNE. We will pick up from this point?

Mr. DOAR. Yes, we will.

Mr. MAYNE. Thank you.

The CHAIRMAN. Mr. Doar, will you kindly advise us what we can expect for the next week and thereafter? I know most of the members would like to get an idea as to the presentation that is going to be made and what you have in mind. I know we discussed that, but I would like you to address yourself to that question.

Mr. DOAR. We will continue and finish up with this material with respect to the domestic intelligence, the Plumbers, on Tuesday, up through the *Ellsberg* case and other matters relating to the *Ellsberg* case that occurred in March and April of 1972 and 1973, including the return of the 17 wiretaps to the Department of Justice and the disclosure of the wiretap to Judge Byrne.

Then on Wednesday, we will present to the committee matters involving, under agency practices, involving the IRS. And on Monday or Tuesday of next week—

The CHAIRMAN. Would you kindly elaborate on that, Mr. Doar, just specifically what are we addressing ourselves to in that IRS?

Mr. DOAR. The allegations involving the attempts by officials in the White House to utilize the IRS for improper purposes. That will be the presentation on Wednesday, and on Thursday we will present a number of matters to the committee, including the brief that the committee asked on impoundment and some other briefs that will be filed early in the week with respect to other agency practices. That, I expect, will deal with a number of subjects.

The CHAIRMAN. I understand you will make those briefs available, though, before you discuss it.

Mr. DOAR. You indicated that you want that all available by Tuesday afternoon.

The CHAIRMAN. That is correct.

Mr. DOAR. We may be able to make them available by Monday afternoon. Then in the following week, we will return to the presentation following the appointment of the Special Prosecutor. We are still conducting investigations with respect to the income tax matter, allegations involving personal finances. We should be ready to present that matter following the period involving the Special Prosecutor.

The CHAIRMAN. Have we not had some indication from Mr. St. Clair with respect to the tax question that there would be some information forthcoming and some material provided?

Mr. DOAR. Yes; we have.

Mr. COHEN. Mr. Chairman, did you indicate that we are going to have a meeting on Friday of next week? I think you said something to that effect.

The CHAIRMAN. We will determine next week. I will be talking with either Mr. Hutchinson or Mr. McClory.

Mr. BROOKS. Mr. Chairman, did I understand you to say you had made some arrangements with the President's counsel, one of his counsel, to get the IRS material?

Mr. DOAR. The arrangements, to my knowledge, have not been consummated. We have discussed it and Mr. St. Clair has indicated to

me that while he had no authority to indicate that we would be getting this material, he thought we would.

Mr. BROOKS. We are not talking about just IRS returns, but the audit and the study?

Mr. DOAR. The audit and the working papers.

Mr. BROOKS. I would caution the chairman that if that is not forthcoming promptly, we might as well draw up a resolution for the Congress. We can pass one and get it done and quit playing games with them on this particular issue. There is no sense in letting him delay it. If they are not going to get with it, we ought to have that resolution and be prepared to pass it next week.

The CHAIRMAN. We are presently awaiting those negotiations.

Mr. DENNIS. Mr. Chairman?

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. Mr. Chairman, as I understand our schedule, then, we would meet on Tuesday, Wednesday, and Thursday, I judge, next week, and then we would meet the following Monday—that is a week from Monday—and a week from Tuesday.

Mr. DOAR. I did not mean meet on Monday. I meant on Tuesday—the following week.

Mr. McCLODY. Then Tuesday and Wednesday. What I am trying to do is try to determine what our schedule is as far as conclusion of this part of the proceedings. I would judge that it is your estimate, at least, that we would conclude all of the initial presentation a week from Tuesday—I mean a week from Wednesday?

Mr. DOAR. Well, we had the matter of the income taxes, or personal finances.

Mr. McCLODY. Yes. Well, is there more than 1 day contemplated for the Special Prosecutor?

Mr. DOAR. Yes. This will take 2 days. That is my judgment.

Mr. McCLODY. Two days for the Special Prosecutor. Then that would be followed by personal finances, as you have described it?

Mr. DOAR. Yes.

Mr. McCLODY. How long would that take?

Mr. DOAR. Well, that is hard to say. I would think it would take 1 day—I mean for the initial presentation.

Mr. McCLODY. So that we would have Tuesday and Wednesday and then Thursday—that would be the end of this phase of the presentation?

Mr. DOAR. Yes.

Mr. McCLODY. Could I just ask this further question, then, do I understand this correctly, that we are to receive a brief on Tuesday which will relate to the subject of impoundment and Cambodia and there will not be a presentation, but it will be presented in the form of a brief?

Mr. DOAR. Well, with respect to impoundment, we have a very extensive, exhaustive brief that we have been working on since we had our last meeting in which Mr. Sarbanes asked us to work on it, which examines all of the factual issues. It reaches no conclusions. But it seemed to us in presenting that matter that the most expeditious way to do it was to give it to the members for reading first and let the mem-

bers at the end of the initial presentation decide whether they wanted us to pursue that area further, and to the same extent, we are trying to do the same kind of a memorandum, although it is more a progress report in the area involving Cambodia.

We are also going to present memorandums which will be shorter with respect to other matters that were subject of the inquiry, which we have not dealt with in the initial presentation so that at the time of the conclusion of the initial presentation, the members of the committee will have before them some material on as many of the matters that we were asked to look into as possible. But these other matters will come to the committee members in the form of memorandums, not in the form of a presentation here, if that is satisfactory.

The CHAIRMAN. Well, I thought that once the memorandums are in the hands of the members, then that Thursday could be set aside for some discussion relative to these matters.

Mr. McCLODY. I just have one more question. That relates to agency practices. Would you just describe that a little bit more? As I understand, agency practices would be presented by you next Wednesday?

Mr. DOAR. No—

Mr. McCLODY. Thursday.

Mr. DOAR. We have already presented two matters in connection with that area, one the matter involving ITT and the other the matter involving the dairy industry price supports. Next Wednesday involves allegations involving abuses in connection with the IRS. We have a number of matters to present to the committee on that.

Mr. McCLODY. You mentioned agency practices.

Mr. DOAR. It is under that heading.

The CHAIRMAN. That is under that category.

Mr. DOAR. That is under that heading.

Now, there are a number of other things that we are inquiring into and we would be preparing to report to the committee on those other matters.

Mr. McCLODY. And that would be in the form of a memorandum?

Mr. DOAR. Yes. Now, there are some matters with respect to campaign contributions that we are summarizing. We have not yet finalized whether we would summarize that in the form of a memorandum, but I think we would initially, so the committee would have that information and really, a status report on where we are in that area.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Doar, are you going to recommend the issuance of additional subpoenas?

Mr. DOAR. Well, yes, I am.

Mr. SEIBERLING. Well, Mr. Chairman, should we not schedule a meeting to take up that question at an early date?

The CHAIRMAN. I intend to schedule a meeting, but in order to do it orderly and in a manner that that meeting may take up various matters, I thought we would defer it until the end of next week.

Mr. DOAR. Could I explain, Mr. Chairman, that there is a matter of another subpoena with respect to the IRS that we would bring up. It occurred to me and Mr. Jenner that the more orderly practice would be to consider the subpoenas after you have heard that material.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I am sorry to get back to the book, but would you go to tab 42.4 for one question, please? On 42.4. Just below the bracket, Mr. Ehrlichman says:

No sir. You see, while I had general accountability, Mr. Krogh was the operating manager of that unit and the President met with Mr. Krogh and his instructions, in fact, were made to Mr. Krogh in my presence, rather than to me in Mr. Krogh's presence. So that I had the—well, I had the oversight, so to speak. Mr. Krogh did make regular reports to the President, saw the President, kept him informed of the progress of the thing, and he was really the operating manager.

The question I have to ask on that is, do we have testimony as to the credibility of that statement by Mr. Ehrlichman, or are we coming to that?

Mr. GILL. Mr. Krogh says he did not have any meetings on the subject of the Plumbers unit with the President with the exception of the one you heard on the tape. Mr. Ehrlichman says that he reported regularly.

Mr. WALDIE. That is the only tape we have?

Mr. GILL. Yes, and Mr. Krogh says that is the only meeting there was.

Mr. WALDIE. So far as our evidence is concerned, Mr. Ehrlichman misspeaks at this point.

Mr. DOAR. One or the other misspeaks.

Mr. WALDIE. Yes. All right, thank you.

Mr. SANDMAN. Mr. Chairman, a question of parliamentary procedure.

Am I correct in my understanding that after we finish what you have outlined, are we going to have sessions where we will move to strike various parts of the investigation such as ITT and probably the milk thing and a few others?

The CHAIRMAN. I think the committee will have to decide when the presentation has been completed just what areas it considers important enough and serious enough to justify recommendations one way or the other, and I think it is a process of elimination on the part of the committee.

Mr. SANDMAN. Would that be proper to be included in your next agenda on some of the items that we have taken up?

The CHAIRMAN. I would think that at this time, I do not think that it would be orderly, since there is the full presentation that ought to be made and some of these matters, as you see as we go along, seem to be interrelated in that some of the questions, some of the allegations, are allegations concerning possible abuses of power or questions that may go to what the committee might ultimately interpret as the basis for impeachable offenses. I think until we have had the full presentation, the committee is not going to be in a position to do it except in a piecemeal fashion.

Mr. SANDMAN. You intend to take it up, though, when we complete all of it?

The CHAIRMAN. Oh, absolutely.

Mr. DOAR. Mr. Chairman, could I add one thing?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Congressman Hogan called my attention to the fact that one of the paragraphs contained a misstatement with respect to the fact that no court order was obtained with respect to wiretaps and the fact that that was misleading and inaccurate. He is right about that.

The CHAIRMAN. Does that appear——

Mr. DOAR. We are going to correct that paragraph and file with the committee a different statement of information on it.

The CHAIRMAN. Thank you. The committee stands recess until Tuesday at 9:30.

[Whereupon, at 5:05 p.m., the committee recessed to reconvene at 9:30 a.m., Tuesday, June 11, 1974.]

IMPEACHMENT INQUIRY

Executive Session

TUESDAY, JUNE 11, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Richard H. Gill, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

First of all I might say I am delighted to see our colleague, Mr. Hutchinson, back looking hale and hearty. [Applause.]

Mr. HUTCHINSON. Thank you, Mr. Chairman. I am delighted to be back. And I want to thank everybody, the staff and the members, and so on who sent me cards and flowers and everything. I deeply appreciate them and, of course, best of all, I am happy to say that I am feeling so much better, and I am very happy to be back.

The CHAIRMAN. I would like to advise the committee, I suppose that committee members have already, upon the reading of the newspapers of both last night and this morning, learned that the President sent a letter addressed to me in response to the subpoenas that we have issued. We have received also a letter of transmittal from Mr. St. Clair in which he advised us that the President had respectfully declined to comply with the subpoena and that the President would in his letter outline the reasons for his refusal to comply, and his declination, and I do not think there is any need for me to go into the letter.

I think all of you are certainly conversant with it. I have had copies of the letters distributed and they should be in your hands. I had them distributed last night.

Frankly, at this point, I believe that whatever members may decide to do, that is the decision individually of the members, I suppose, again to consider how to respond to this. And it is my feeling, of course, that insofar as that letter is concerned, we have written to the President, we have told him of our not only disappointment, but frankly how disturbed we were, and we used the terms "grave matter," et cetera. But, unfortunately the President has his own point of view. And while I disagree strongly with the President's position on executive privilege, and I think the position has been stated not alone by myself, but by many other members of this committee, and I know I have been joined in that statement of position by the ranking member, Mr. Hutchinson.

But, nonetheless, frankly, at this time I have no recommendation to make to the committee except to continue on in our effort to try to conclude this inquiry within a reasonable time and after we have had the presentation made to us by counsel, and after we have had an opportunity to call whatever witnesses may be necessary. With that in mind, I would like to state again, that the rules of procedure that were adopted by the committee, as we all know, provide that the decision on the calling of witnesses will be made following the presentation of the initial presentation.

I have received a letter from Mr. Hutchinson which is signed by all of the Republican members who would like to call a meeting for the purpose of making a decision regarding the calling of witnesses. I feel very strongly that this should not be done, in the interest of an orderly procedure, and in the interest of complying with the rules we have on this to schedule such a meeting at that time when the initial presentation has been completed.

Mr. RAILSBACK. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Just a moment. At that time, the inquiry staff, committee members, and the President's counsel will be expected to submit to the committee in writing the witnesses they request who are to be called, and the specific matters about which the witness or witnesses will testify, and the specific content of the witness' testimony. And this is again in accordance with the rule.

The inquiry staff has been conducting and is continuing to conduct at the present time interviews of possible witnesses. And I would like to emphasize again that this proceeding before the House Judiciary Committee is not a trial. It is an inquiry to determine whether or not the committee should recommend to the House of Representatives that a charge be brought against the President of the United States or charges as the case may be.

We have received a tremendous amount of evidentiary material. I know that a lot of us are impatient and would like this presentation to be speeded up. And frankly, in my judgment, and I think that it just bears no controversy, that it is impossible to be able to speed up the inquiry and to present the material other than in the way in which it is now being presented, because counsel and staff are up to the last moment trying to bring up to date the material that they do present each day to us.

A good deal of this material has been submitted to the committee, and every attempt has been made to ascertain the pertinent facts and

to bring them before the committee's attention. And I think that this is the only sound way for us to make a judgment, and this is the only sound way for us to be able to say that we have discharged our obligation and our responsibility.

And I think that we have got to remember too, in the consideration of the question of calling witnesses, whatever witnesses we do call, certainly we do not want to go over the ground or duplicate over again what has already been presented to other committees as sworn testimony and presented to grand juries.

So, I hope that this is taken into account.

Mr. RAILSBACK. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, as I interpret what you are saying, you are declining the request of all of the Republicans to discuss and act on this subject of witnesses?

The CHAIRMAN. At this time.

Mr. McCLORY. Which I would expect would be on Friday. I want to express an extreme disappointment and dismay of the Republican members on the one hand. Furthermore, I would like to state that with respect to your statement, Mr. Chairman, it would seem to me it suggests that when you say, well, this is not a trial, and so we are just performing some kind of a perfunctory or preliminary investigation here, which the measure of proof need be only minimal, which I think would be an erroneous decision to reach. And I would hope that in that respect we would decide promptly, possibly on Friday, or as soon as possible, what the measure of proof is that we are going to require in order to consider articles of impeachment.

And furthermore, Mr. Chairman, I would like to inquire, and I would like to have a specific answer with respect to the witnesses that the staff is interviewing so that we will know who is being interviewed, who is being considered by the staff at this time for possible calling as a witness.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Witnesses are being interviewed at the present time, as I stated. That is going on, and I think that is the orderly way to do it. And I think that as long as we have counsel who are qualified and competent to conduct these interviews and report to us as to whether or not these interviews are going to produce witnesses, I think that we ought to at least give them an opportunity to make this kind of a presentation to us. And I think once again that we have got to recognize we are either going to comply with the rules, and I want to state emphatically that I am not declining to hold a meeting, but I am not going to hold a meeting other than at such time as the meeting is in order.

The rules specifically provide that the presentation of witnesses will not be until such time as there has been a complete presentation of the evidentiary material.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. And I think that the members will be accorded that opportunity. And as I have stated, the members should, if they want to make recommendations, make those recommendations in order

to justify the calling of witnesses so that the committee may make that determination when it considers this question.

Mr. McCLORY. Do I understand, Mr. Chairman, that the members of the committee are not entitled to know the witnesses or possible witnesses that our counsel are interviewing?

The CHAIRMAN. Our counsel will, I am sure, advise the committee members as to who is being interviewed. And if you want a running account of every moment of what the staff is doing, then I think that we had better recognize that we had better take over this inquiry ourselves, directly, and interview the witnesses and be in there with the staff at every moment. I do not think that this was really the role that we were to play.

Mr. McCLORY. Could I ask this: Are they being interviewed under oath?

Mr. DANIELSON. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. McCLORY. I understand from the——

Mr. RAILSBACK. Parliamentary inquiry.

Mr. McCLORY. I understand from the gentleman, Mr. Doar, they are not.

The CHAIRMAN. They are interviewed. They are not being——

Mr. McCLORY. Let me just add this, Mr. Chairman. I do not agree with your interpretation of the rules with regard to the limitations on the part of the committee to wait until the entire initial presentation to consider the subject of calling witnesses.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, in respect to our rules, under rule b(2), it states that the President's counsel shall be invited to respond to the presentation orally or in writing as shall be determined by the committee. I am just wondering, Mr. Chairman, what the timetable is to permit Mr. St. Clair to respond and to give him an adequate opportunity to respond to maybe 5 or 6 weeks of our presentation? How much time is he going to have? And I am wondering also, when are we going to make a determination as to how he shall respond?

The CHAIRMAN. Well, if I might reply, I think Mr. St. Clair has already undertaken a method of response. And I think Mr. St. Clair has been given the privilege of attending these hearings, and this privilege was accorded him as a matter of grace, as a matter of courtesy. And Mr. St. Clair will be accorded every privilege that the rules provide for I am sure at the completion.

Mr. RAILSBACK. Well, what are we talking about? Are you saying that now——

The CHAIRMAN. Do you mind——

Mr. RAILSBACK. Well, I have got the floor, I think. Are you saying he is not now going to be given the right to respond?

The CHAIRMAN. I did not say that at all. I stated at the completion of the presentation Mr. St. Clair will be given the right to respond.

Mr. RAILSBACK. All right.

The CHAIRMAN. All right, we will proceed now.

Mr. DENNIS. Mr. Chairman, may I be recognized?

The CHAIRMAN. No. I am going to go ahead with the presentation at this time. Otherwise we are going to spend time in arguing back and forth and the decision has been made. Mr. Doar.

Mr. DOAR. We are starting, members of the committee, we are starting with book 4 this morning, tab 56.

Mr. GILL. Tab 56, in August 1971. William Sullivan delivered to Robert Mardian the files and logs respecting the 1969-71 wiretaps and the FBI surveillances of Joseph Kraft. Shortly thereafter, Mardian delivered these records to the White House. According to Mardian, when the materials were delivered by him to the White House, Henry Kissinger and Alexander Haig were present and assured themselves that the summaries of wiretap information were identical to the summaries that Kissinger had previously received. A similar check was made with Haldeman as to summaries sent to him.

Mardian has stated that two of the summaries sent to Haldeman were missing from Haldeman's records. Mardian then delivered the files and wiretap logs to John Ehrlichman in the White House.

Mr. DOAR. After Mr. Ruckelshaus was appointed Director of the FBI, he had the Bureau conduct an intensive investigation to see if they could locate these wiretap logs.

Robert Mardian, a former Assistant Attorney General in charge of the Internal Security Division, was interviewed on May 10, 1973, in Phoenix, Ariz., I believe. He testified in detail, although initially somewhat reluctantly, with respect to the transfer of this material to the White House. He was concerned about disclosing any direct communications of information with the President.

And if you will notice on 56.1, he said at the fifth paragraph:

Mr. Mardian said he felt compelled not to disclose any information concerning any direct communication he had had with the President of the United States and suggested that the information desired by the FBI could be obtained from General Haig, John Ehrlichman, H. R. Haldeman, and Dr. Henry Kissinger.

If you will look at page 6 of that interview, by way of preliminary, Mr. Mardian related how the material was delivered to him by Mr. Sullivan of the FBI, and that he went over to the White House and checked the material at the instruction of the President. He checked which summaries Mr. Kissinger had, and which summaries or reports Mr. Haldeman had received, by comparing the summaries they had in their file with the summaries that he had received from Mr. Sullivan.

He said that he then did this not to pick up that information, but just to verify that the material, at least the impression was that to the best of his ability to determine with certainty the location of all of these copies of these reports from the FBI with respect to these particular 17 wiretaps.

And then he relates on page 6 of his interview, at the third paragraph: "After Mr. Haldeman completed his check, Mr. Mardian said he retrieved the bag with all its contents and walked into the Oval Room of the White House and left the bag." The Bureau agent asked him specifically to whom he gave the bag, and he said, "He preferred not to answer because of the President's order concerning employees talking about national security information."

He was asked if he gave the bag to Mr. Nixon, the President of the

United States, and Mr. Mardian sat back in his chair, shrugged his shoulders, hesitated, and said: "I cannot answer that question."

Subsequent to leaving the bag there, the bag was then given to Mr. Ehrlichman. And if you look at tab 56.4 for just a minute, members of the committee, the third paragraph is bracketed, but just below the bracket and outside of the bracket, Mr. Ehrlichman testifies in his 302 interview which was on the 11th of May. This was at a time that the Bureau was trying to find out where the location of these logs were, so that they could get the information to Judge Byrne in order to comply with an order that Judge Byrne had issued in the Ellsberg trial.

Mr. Ehrlichman said, and as I say, I am referring to the second sentence just below the bracket, he said: "He received specific instructions as to what to do with this wiretap material, and he said he would not name the individual who issued these instructions."

Tab No. 57.

Mr. GILL. On July 29, 1971, the President sent a letter to FBI Director Hoover asking him to furnish Krogh with files containing material about the investigation of Ellsberg and the Pentagon Papers.

In response, on August 3, 1971, Hoover sent Krogh copies of FBI interviews and other material. In connection with his investigation of the disclosure and publication of the Pentagon Papers, the special investigation unit also from time to time received information from the Department of Defense, the Department of State and other Government agencies.

Mr. DOAR. Down at the bottom of the page, with respect to the annotations, you will see 57.5, 57.6, and 57.7. Those three tabs relate, or 57.5 is a report by Krogh and Young to Mr. Ehrlichman with respect to their efforts with other agencies and departments of the executive branch to get all information that they can about the *Pentagon Papers* case.

Tabs 57.6 and 57.7 are memorandums to Mr. Ehrlichman in which Mr. Krogh and Mr. Young report to Mr. Ehrlichman about meetings with Secretary Laird and Mr. Buzhardt at the Department of Defense. That is 57.6. And meetings with Mr. Helms and Mr. Osborne of the CIA.

The first paragraphs of both 57.6 and 57.7 emphasize the seriousness with which the President viewed the investigation into the publication of the Pentagon Papers. And 57.7 says that the purpose of the meeting with Mr. Helms was to impress upon Helms the President's personal interest with respect to the Pentagon Papers, as was done with the Attorney General and Secretary Laird. Tab 58.

Mr. GILL. In the week prior to August 5, 1971, Krogh, Young, Hunt, and Liddy discussed information that the FBI had sought to interview Ellsberg's psychiatrist, Lewis Fielding, but that Fielding had refused to discuss anything involving any of his patients. There was discussion about someone going into Fielding's office to find whatever information there was about Ellsberg.

Liddy said that when he was in the FBI he had been involved in an entry operation. There was discussion of whether Cuban Americans who had worked with Hunt on the Bay of Pigs invasion might be available to make the actual entry into Fielding's office.

Mr. DOAR. Mr. Chairman, the annotated material behind 58 and through a number of the paragraphs subsequent to 58 contains testi-

mony of the grand jury. This is the Fielding break-in grand jury that investigated the case that is now pending for trial before Judge Gesell, and is scheduled for trial next Monday. We requested of Judge Gesell that we obtain this grand jury material, and he released it to us subject to the condition that it not be made public until the jury in that case was sequestered and until Mr. Krogh and Mr. Young had testified as Government witnesses. That is assuming that the case were to go, proceed to trial as scheduled next Monday.

For that reason, at your instruction, we did not include the pages of the grand jury testimony in the books, but are prepared to distribute those to the members this morning in accordance with the same procedure that we followed with respect to the transcripts.

The CHAIRMAN. Are they being distributed now? This material will be distributed, and I request of all members that you turn them in afterwards, since this has been delivered to us under this embargo from the judge.

Judge Gesell has released it under that proviso and that condition.

Mr. JENNER. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman, ladies and gentlemen of the committee. I handled the matter before Judge Gesell in the in camera proceedings to obtain his permission in the first—we had to have his permission to afford the committee these grand jury transcripts, and he indicated the desire to be of assistance to the committee. But, he was terribly concerned about the break-in case going to trial a week from yesterday, and wanted to consider what conditions he would impose in the light of the responsible action of the committee. He then called or had his clerk call and advised that he had reached his conclusion, and he placed that conclusion in a letter to your chairman. And you might possibly run into a catastrophe, as far as he is concerned, if any portion of the grand jury transcript becomes public before the jury is sequestered some time next week, and before Mr. Krogh and Mr. Young appear as witnesses, which we understand will be in the first few days of the trial.

And I gave my professional representation on behalf of the committee that every caution and every effort would be made to meet Judge Gesell's concerns and the conditions that he placed in his letter to the chairman.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Jenner, I presume that he would feel the same way, and that his conditions apply to any oral summaries of the transcripts?

Mr. JENNER. Yes, sir.

Mr. SEIBERLING. Just to get that in the record, too.

Mr. JENNER. Apart from in this chamber.

Mr. SEIBERLING. Yes.

Mr. WIGGINS. Mr. Chairman?

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I would like to address a question to Mr. Jenner.

The CHAIRMAN. Mr. Mayne.

MR. MAYNE. Do you not feel, Mr. Jenner, in view of the widespread leaking of our proceedings of last Thursday on the Plumbers case, which was reported in almost complete detail in the New York Times of Sunday, June 9, showing that without any question there has been an outrageous breach of confidentiality by this committee, or some members of the committee or the staff, that the assurances that you gave to Judge Gesell on this very important matter that has just been distributed to the committee can be described as no longer anything more than a pious hope?

MR. JENNER. Mr. Mayne, I must say that I still have confidence in the professional integrity of every member of this committee, and that is what is presented here.

THE CHAIRMAN. I think the question is not whether or not it is a pious hope on the part of Mr. Jenner. But, Mr. Jenner, acting as counsel for this committee, in order to secure this material that is important to our inquiry, did have to make these representations, and the material would not have been released otherwise. And to leak them or to violate the confidentiality is something, of course, we have very little control over if members intend to do this. But, nonetheless—

MR. MAYNE. Well, Mr. Chairman—

THE CHAIRMAN. [continuing] I think the committee will have to proceed on that basis.

MR. MAYNE. Well, Mr. Chairman, the point is no more solemn commitments could have been made than were made on the information that was leaked last week, and I know how interested the chairman has been in preserving confidentiality. But, the fact remains that we have obtained this information under a representation that it would be kept confidential, but it definitely is not. It has been delivered en mass to the New York Times, and I am very concerned that the same thing will happen to this material this morning.

MR. SEIBERLING. Well, Mr. Chairman, could I be recognized?

THE CHAIRMAN. Mr. Seiberling.

MR. SEIBERLING. It seems to me that based on the assurance that Mr. Jenner gave Judge Gesell, and the statement he made to us, that this goes, that a leak would go beyond the violation of the rules of the committee, and would amount to a breach of professional ethics, and possibly subjecting the person leaking to contempt of court. Am I correct in that, Mr. Jenner?

MR. JENNER. It is a possibility, Sir.

MR. SEIBERLING. Well, I think it should be borne in mind.

MR. WIGGINS. Mr. Chairman?

THE CHAIRMAN. Mr. Wiggins.

MR. WIGGINS. Mr. Chairman, this book deals largely with the matter of the entry into Dr. Fielding's office. And prior to the meeting I have gone through the tabs in the book, and there is no reference in the tabs, in the annotations to the state of the President's knowledge with respect to that. And I wonder if the staff might make reference to book 3, volume 4 of the testimony heretofore received, which bears upon the state of the President's knowledge of this event so that it can be more collated and understood by us at the proper time.

THE CHAIRMAN. Mr. Doar.

MR. DOAR. To move as quickly as possible, Mr. Chairman, I will not

refer the committee to the grand jury testimony, except information I think is especially important, and will just summarize the testimony.

The testimony with respect to the method of entry into Dr. Fielding's office was suggested to Mr. Krogh and Mr. Young by Mr. Liddy. And Mr. Hunt said that he could produce people that could do this surreptitious entry operation, and it was made clear by Mr. Krogh and Mr. Young, and was understood between the four of them that the operation should be conducted so that Mr. Hunt and Mr. Liddy would not be directly associated with the entry because they were working with the White House. Tab 59.

Mr. GILL. On or about August 5, 1971, Krogh and Young reported to Ehrlichman—

Mr. SEIBERLING. Mr. Chairman, before we do that, are we going to be referred to this material? If not, why bother to give it to us at all?

Mr. DOAR. Well, we are going to refer to it. But, I indicated that they are referred to in a number of paragraphs, and in the paragraphs that I would summarize those, but where I wanted to refer to them specifically, I would call your attention to them.

Mr. GILL. On or about August 5, 1971, Krogh and Young reported to Ehrlichman that the FBI had been unable to gain access to Fielding's files on Ellsberg. They told Ehrlichman that to examine these records, something other than regular channels through the FBI or through the ongoing agencies would have to be undertaken.

Krogh told Ehrlichman that there were individuals in the unit and individuals available who had professional experience in this kind of investigation. Ehrlichman said that he would think about it.

Ehrlichman has stated that he discussed with the President the need to send Hunt and Liddy to California to pursue the Ellsberg investigation, and the President responded that Krogh could do whatever was necessary to get to the bottom of the matter—to learn Daniel Ellsberg's motive and potential for further action.

Mr. DOAR. Now, if the committee members would refer to page 29 of the testimony of Mr. Krogh in the grand jury material.

Mr. GILL. That is the transcript of January 30.

Mr. DOAR. In the transcript of January 30. The transcript of January 29 runs through pages 1 through 11, and the transcript of January 30 starts with page 22. And if you will see at the top of page 29, page 29, Mr. Krogh indicates that he met with Mr. Ehrlichman on the 5th of August, and then his answer, at the middle of the page, line 10:

Well, in all likelihood we would have discussed the fact that we had or the FBI had not been able to gain access to Dr. Ellsberg's files from his psychiatrist, Dr. Fielding, that there appeared to be no likelihood that that would take place, and that if we were to examine those medical records and gain access to them, or to derive the information about Dr. Ellsberg's mentality or what have you, that something other than the regular channels through the FBI or through the ongoing agencies would have to be undertaken.

And at page 30, at the second line, or line 4, Mr. Krogh says: "I do not recall the specific language." Well, the question dealt with whether or not Mr. Krogh's unit had the capability of making an entry or conducting this kind of investigation. And Mr. Krogh says that while he does not recall the specific language, "If I was to suggest that something other than the FBI or some other means be used that I would

have stated that we did have individuals in the unit and individuals available who had professional experience in this kind of investigation that could be available."

And then if the committee would turn to the testimony of David Young, which has also been delivered to you this morning, it is testimony on Wednesday, August 22, and referring you now to page 39. Mr. Young is talking about a meeting with Mr. Hunt, Mr. Krogh, and Mr. Liddy, and about the suggestions of having a covert operation to examine the medical files held by Ellsberg's psychiatrist. And this is at page 39.

The question was put to him at line 21: "What suggestion did Mr. Hunt make?"

The answer:

Mr. Hunt made the suggestion that perhaps one way of gaining information which would give us some indication of the scope of the problem plus assist in determining the motives et cetera with regard to the psychological assessment would be to have a covert operation undertaken to examine the files held by Dr. Ellsberg's psychiatrist.

And if the committee would then turn——

Mr. MAYNE. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. At the bottom of page 39 it seems to be an answer rather than a question which is followed by another answer. Is there not some typographical error there at the bottom of page 39 and the top of page 40?

Mr. DOAR. I think it is probably two answers, one after the other, Mr. Mayne.

Mr. MAYNE. Well, there is a question mark at the end of the first answer, which seems very confusing to me.

Mr. DOAR. Mr. Mayne, they do that. Apparently the court reporters do whenever an answer is carried over to the next page, they indicate that it is an answer that is continuing when there is a break in the paragraph and they put an "A" again and that appears to be what happened here.

Mr. MAYNE. How do you account for the question mark?

Mr. DOAR. I cannot account for the question mark.

Then if you will turn over to page 41 at line 6, the attorney asked Mr. Young if he talked to Mr. Ehrlichman prior to the date of the August 11 memorandum and Mr. Young said "That is correct. Yes."

Question. What did Mr. Ehrlichman say at that time?

Answer. The tenor of the exchange, the essence of the exchange, was simply this had been suggested by Mr. Hunt as a possible way of finding out information which we were trying to gather, as I just explained, to determine the motives, etc. And Mr. Ehrlichman simply listened, and in effect said let's think about it. He did not say good, or bad, or approve or disapprove. It was simply a let's think about it type of reaction.

And then if the committee would turn to 59.3, which is back in the book, this is Mr. Ehrlichman testifying before the Los Angeles grand jury and he has already testified about the fact that they were going to have to do some investigation themselves if they were going to get the material that they thought was necessary in connection with the investigation. At page, and I cannot make out the top, but it is at 663 of the testimony of Mr. Ehrlichman before the Los Angeles grand jury. Within the brackets on that page, the question was asked:

Now, when this new approach came into being that seems to be characterized as a "do it yourself" approach as distinguished from a coordinated approach. Would you agree with that observation?

Answer. It was a fallback. It was a last resort.

Question. Did the President know about this change of approach?

Answer. Yes he did.

Question. Did he specifically approve it?

Answer. Yes, he did.

And the next question was——

Mr. DENNIS. Mr. Doar, where are you?

The CHAIRMAN. Where are you, Mr. Doar?

Mr. JENNER. It is the last sheet under tab 59.3.

Mr. DENNIS. Mr. Doar?

Mr. DOAR. Yes.

Mr. DENNIS. You have had the benefit of reading this, which I have not. According to you, does this mean that he specifically approved the change of approach? Now, what is he specifically approving? What are we suggesting here?

Mr. DOAR. That Hunt and Liddy seek to secure the psychiatric files from Dr. Fielding by a covert operation.

Mr. DENNIS. Are you suggesting that this indicates or proves that the President authorized breaking in to Dr. Fielding's office out there?

Mr. DOAR. I think that I am suggesting only what this testimony, what Mr. Ehrlichman has said here.

Mr. DENNIS. Well, what is it? I have not read it. You have. Now, they are talking here about fallback positions, and a do it yourself approach as against a coordinated approach.

Mr. RANGEL. Regular order.

Mr. DENNIS. I am asking a question if the chairman please, and the specific statement is did the President know about this change of approach. And the answer is yes he did. "Did he specifically approve it?"

"Yes, he did."

Now, what is meant by that change of approach?

The CHAIRMAN. I do not think——

Mr. SEIBERLING. Regular order.

The CHAIRMAN. I do not think that is a proper question to ask counsel what he meant.

Mr. DENNIS. Mr. Chairman, I am asking counsel what they were talking about here in the testimony which he has read, and I have not. And I submit that is a perfectly proper question.

Mr. SARBANES. Was the gentleman's suggestion that he would like to have some of the previous pages before this exchange in order to be able to form that judgment? Is that what the gentleman is suggesting? Because it would seem to me that that would be a reasonable suggestion, and that the question that the gentleman has put forth is not a proper one.

Mr. WIGGINS. Well, Mr. Chairman——

Mr. SARBANES. Now, if that is the gentleman's suggestion, it seems to me reasonable.

Mr. DENNIS. Well, I would like to have the material, of course. But, if we do not have the material, I would like to know what counsel thinks we are referring to. I do not think we ought to suggest some-

thing here without knowing what we are talking about and I am trying to find out.

Mr. WIGGINS. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. May I ask counsel whether or not there are other pages that would answer the question of the gentleman other than having to read into what you have already read what is meant by it?

Mr. HOGAN. Mr. Chairman?

Mr. DOAR. The earlier pages just develop the fact that they were a passive agency, receiving reports and that they made a change in their operation to conduct an act of investigation on a do-it-yourself basis.

Mr. WIGGINS. But turning to page 64, counsel, the following page 64, is that available?

Mr. DOAR. Yes, it is. We could make it available for you.

Mr. WIGGINS. Would you make it available?

Mr. DOAR. Yes, certainly.

The CHAIRMAN. I think that would be helpful since the next questions suggests something that might be meaningful.

Mr. DOAR. OK.

Mr. SEIBERLING. Mr. Chairman?

Mr. WIGGINS. I do not know of course what follows, but if simply page 64 is inadequate, then sufficient pages at least to complete this line of inquiry by the counsel.

Mr. DOAR. We will make them available.

Mr. DENNIS. I think the preceding pages likewise.

The CHAIRMAN. Would you make those pages available, Mr. Doar?

Mr. DOAR. Yes, I will.

Mr. DENNIS. I thank you.

Mr. Doar, may I ask you one other question while we are here?

Going back to Mr. Krogh's testimony on pages 29 and 30 of his testimony of January 30, it is rather odd the way that his testimony is given. I am sure it has occurred to you. They ask in here what was said and his answer is "Well, in all likelihood we would have discussed."

And then over on the next page he is asked again to give the conversation and he says "I do not recall the specific language, but in all likelihood if I was to suggest then I would have said," thus and so. It is rather indirect, suppositious testimony for evidence in a court would you not say or a grand jury even?

Mr. DOAR. Well, the witness is not——

Mr. DENNIS. There is no direct statement in fact of what he did say. He said if I had been going to say something this is probably what I would have said.

Mr. DOAR. That is the way he puts his best recollection. He is not what you would characterize as a forthcoming witness.

Mr. DENNIS. Well, I would have to agree to that.

The CHAIRMAN. Proceed.

Mr. BUTLER. Excuse me, Mr. Chairman.

The CHAIRMAN. Mr. Butler?

Mr. BUTLER. I am a little bit troubled that the President responded that Krogh should do whatever was necessary to get to the bottom of the matter. And, of course, the matter is clear to me.

But, is there anything in the testimony that indicates that the Presi-

dent was told that Mr. Krogh was contemplating an illegal act? That is the implication in this summary. And I think that it is inappropriate from what has been provided me today.

But, if there is such a basis for that implication, I want to have an opportunity to explore it now.

Mr. DOAR. There is no direct testimony that the President authorized an illegal act and that is not the implication of paragraph 59. The testimony is Mr. Ehrlichman's affidavit with respect to this matter at 59.4, which if you look at page 8 there of 59—

Mr. BUTLER. Yes, sir, I read that.

Mr. DOAR [continuing]. Where he said:

He responded that Krogh should, of course, do whatever was necessary to get to the bottom of the matter—to learn what Ellsberg's motives and potential further harmful action might be.

Mr. BUTLER. Well, then, I am not warranted in assuming that that implies that Mr. Krogh or that the President was aware that Mr. Krogh might be considering an illegal act, and there is nothing on this point?

Mr. DOAR. Nothing direct on that point, that is right.

Mr. BUTLER. Well, is there anything indirect on that point?

Mr. DOAR. Well, there is—

Mr. CONYERS. Mr. Chairman?

Mr. DOAR. A year earlier the President approved the use of illegal entry in connection with certain matters involving national security, and the use of the plan that was then subsequently withdrawn. There are other discussions later on that add other things to this. Mr. Young has a discussion with Mr. Ehrlichman to the effect of getting permission to do this from higher authority, but there is no direct evidence that the President knew that there was an illegal act going to be committed. That is true.

Mr. DRINAN. Mr. Chairman?

Mr. WIGGINS. I am just wondering, counsel, if this might not be a good point to annotate the matter that I called to your attention earlier which is contained in volume 3, book 4, I believe possibly book 5 in which the President states on a tape the state of his knowledge about this matter.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. May I ask Mr. Doar a question? On tab 59.4, on the second page of Ehrlichman's statement, second to the last paragraph, he states both before and after the Krogh meeting of July 24:

The President also gave me instructions to pass along to Krogh and Young. Invariably when they made recommendations jointly or severally the President concurred. His only criticism of their effort was that it was not vigorous enough.

Is there any evidence, direct or indirect, that some of those recommendations subsequent to July 24 to the President included the burglary?

Mr. DOAR. Not to the President. The memos are all addressed to Mr. Ehrlichman.

Mr. DRINAN. Thank you.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, I still do not understand where 59.3 fits into

the tab at 59. Tab 59.3 is the testimony we have been discussing. I do not understand what that is supporting in the tab 59? What conclusion in 59 does 59.3 support?

Mr. DOAR. The fact that Mr. Ehrlichman stated that he discussed this matter with the President, the need to make an independent investigation to secure this material if they were not able to get it from the FBI. Dr. Fielding had been interviewed by the FBI and had declined to give this information to the FBI.

Mr. WALDIE. Well, where is the conclusion the President responded that Krogh should do whatever was necessary to get to the bottom of the matter?

Mr. DOAR. That is in Mr. Ehrlichman's affidavit on page 8 of Mr. Ehrlichman's affidavit in which he says that he told the President of the conversations.

Mr. WALDIE. I see it. I am sorry.

Mr. DOAR. "He responded Krogh should do whatever he considered necessary to get to the bottom of the matter."

Mr. WALDIE. Where I am confused in reading that excerpt, and I agree we probably need more material here, I cannot tell whether the do-it-yourself approach has reference to just the entry of Dr. Fielding's office, or the entire concept of the Plumbers.

Can you shed any light on that?

Mr. DOAR. It has to do with switching over and being an active investigation and with respect to the Plumbers, not with respect to all of the matters in connection with the special investigation unit.

Mr. WALDIE. So the do-it-yourself approach that Ehrlichman is talking about is not per se a reference to the break-in of Fielding's office?

Mr. DOAR. That is correct.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Doar, is there any testimony, and I am now looking at tab 58, that anything else was meant by covert operation in the conversations referred to there, aside from breaking into the office?

Mr. DOAR. There is some testimony later by either Mr. Krogh or Mr. Young that covert operations might have meant getting access without an illegal entry.

Ms. HOLTZMAN. Have we asked for any conversations between Mr. Ehrlichman and the President regarding this matter?

Mr. DOAR. Not with respect to this, no, we have not.

Ms. HOLTZMAN. Do we intend to?

Mr. DOAR. Well, we have some matters to present to the committee, yes.

Ms. HOLTZMAN. Thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Doar, on tab 59.4, the affidavit of John Ehrlichman, page 7, the second sheet of that tab, the third paragraph, Mr. Ehrlichman states that:

When the President discussed leaks with Egil Krogh and me on July 24, he demanded that Krogh find those responsible for the SALT leak, resorting to

polygraph tests, regardless of government employees' objections, and gave the clear impression to me that Krogh was to use extraordinary measures to carry out his assignment.

Then they go on and discuss the Ellsberg matter. Have we any evidence as to what Ehrlichman was referring to in describing extraordinary measures?

Mr. DOAR. Well, just what is on the tape itself that you listened to last Thursday.

Mr. SEIBERLING. That is the extraordinary measures that he was referring to, the polygraph and all of that?

Mr. DOAR. Well, the only—we have the tape of July 24, and that is the conversation, and what is on the conversation is the substance of that, and is, of course, the best evidence of that conversation.

Mr. SEIBERLING. Yes.

Mr. WALDIE. May I ask a question?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, just one further question on that tab 59.3. When the question is, did the President know about this change of approach and the answer is that yes he did; and the question was, did he specifically approve it and the answer was yes he did; is that a question and a response relative to the change of approach from the agency approach to the Plumbers or is it a question and answer dealing specifically with the Fielding break-in?

Mr. DOAR. It is a question and answer dealing specifically with sending Hunt and Liddy out to California to do some investigating with respect to securing the psychiatric records.

Mr. WALDIE. That is your conclusion of this?

Mr. DOAR. If you look at page 547 of 59.3 within the brackets:

Q Did Mr. Krogh ever seek your approval in connection with any contemplated courses of action that were to be undertaken by the members of the Plumbers group or special unit?

And the answer is:

Yes. In the former connection, in the matter of the FBI—and I think he—he and David Young probably jointly came to the conclusion that it was going to be necessary for them to do some first party investigation, so to speak. And since this was a departure from the original—the original concept, we discussed it.

Q What was the first part investigation—

A Well, specifically sending Hunt and Liddy out here to do some investigation for Krogh and Young, first party.

Now, prior to that discussion, the testimony was that Krogh and Young and Liddy and Hunt had had a meeting, and they had discussed ways of getting access to this material, that Liddy had suggested a method which was a surreptitious entry, and he had related that he had done that based upon his work as an FBI agent prior to the time that Mr. Hoover had stopped that sort of thing, illegal entry, in 1966. And then Mr. Hunt had suggested that he had people that could do this without tying Hunt and Liddy to it, and Krogh and Young were very insistent that if such an operation was undertaken that it not be tied to Hunt and Liddy. And then subsequently to that, Mr. Krogh and Mr. Young went to Mr. Ehrlichman and reported about this.

Now, they do not testify that they went any further with Mr.

Ehrlichman than to say that they talked about a covert operation. But they had in their heads at the time, at least, the fact that Hunt and Liddy had suggested a surreptitious entry. And Mr. Ehrlichman's testimony is that he apprised the President that it was necessary for them to do some investigating with respect to Hunt and Liddy on their own because they were not getting the material from the regular agencies.

Mr. WIGGINS. Mr. Chairman, in order to be helpful to the other members, you may wish to make a note in your book at this point to see page 158 of the submission of Presidential documents, and just to refresh your recollection, take just a second, and that is a taped conversation between the President and Dean.

Dean is telling the President about Ehrlichman's potential vulnerability because of his involvement in the Dr. Fielding break-in. And the President responds, and I will just read:

"What in the world—what in the name of God was Ehrlichman having something (unintelligible) in the Ellsberg (unintelligible)?" And the President says "This is the first I ever heard of this. I, I (unintelligible) care about Ellsberg was not our problem."

Dean says "That's right."

The President "(Expletive deleted)." You might wish to cross-reference that because it is a direct Presidential statement of his knowledge of that event.

Mr. HUNGATE. Mr. Chairman, it seems to me we might be right into the very kind of questioning of counsel that Mr. Dennis was sort of told not to ask. I wonder if we could go forward here. I think each member may have to decide for himself what this means, and that it would be helpful, as someone suggested, if we could have a few pages before and after this question and then go on with our outline.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. I suggest that the committee might also consider the fact in this connection that at the time of these discussions that we have no evidence that there was any discussion of the action of the President approving the Huston plan and that had been disapproved—well, it was not put into operation so that while he had approved the Huston plan, and then it had been abandoned, here many months later that subject matter was not discussed. We have no evidence that it was discussed in this connection.

Mr. DOAR. Tab No. 60.

Mr. GILL. According to a document in the file of the special investigations unit entitled "Specific Projects as of August 10, 1971," in addition to the investigation of Ellsberg and the Pentagon Papers and the SALT disclosure, the unit undertook projects with respect to an analysis of leaks, press regulations, classification and declassification systems, the cancellation of software contracts, and a polygraph study.

Mr. DOAR. Tab No. 61.

Mr. GILL. On August 11, 1971, the CIA delivered to Krogh and Young a psychological profile on Ellsberg dated August 9, 1971. On the same day Krogh and Young submitted a written status report to Ehrlichman on the entire Pentagon Papers project. The report

referred to the psychological profile of Ellsberg that had been received, but stated that Krogh and Young considered it to be superficial. Krogh and Young recommended that a covert operation be undertaken to examine all the medical files still held by Ellsberg's psychoanalyst covering the 2-year period in which Ellsberg was undergoing analysis. Ehrlichman stated his approval of the recommendation if done with Krogh and Young's assurance that it was not traceable. Copies of the August 11 status report which were furnished by the White House to the House Judiciary Committee have the paragraph recommending a covert operation and Ehrlichman's approval deleted.

Mr. DOAR. In connection with the memo, you will see that both versions of the memorandum are set out specifically at 61.5 and 61.6. Mr. Young eventually furnished to the Senate select committee the memorandum at 61.5 which contains paragraph 2. Paragraph 2 you will see is numbered page 2644 of the Senate select committee volumes and discusses the psychological file, and then on the top of 2645 makes a recommendation that a covert operation be undertaken to examine the medical files. The handwritten note there is signed "approved. E. if done under assurance that it is not traceable."

There is a paragraph 5 you will see also missing from that memorandum and there is some testimony as to what that paragraph dealt with. And it was an effort to discover some telephone conversations of Dr. Ellsberg back in 1952 in England.

The other version of the memorandum which was furnished to us came from the White House materials that were furnished to the committee in March, and you see that the paragraph 2 is not there.

The CHAIRMAN. Where are you at?

Mr. GILL. Excuse me. That is 61.6, and it has been retyped. The original is behind it. And the paragraph, as you see, the page has simply moved up to fill the space where paragraph 2 appeared in the version furnished by Mr. Young, and the signature by Mr. Ehrlichman and his written recommendation about "not traceable" has been deleted. That is all we know about it. That is the form in which we received it.

Mr. RAILSBACK. Mr. Chairman, may I just ask now in response to what request was this second document given to us that appears to have been modified?

Mr. DOAR. It came with the material that had been given to Mr. Jaworski. It just came in a bundle of material that had been given to Mr. Jaworski out of the plumbers file.

Mr. RAILSBACK. And it was in the—was it in the same form that we have it in right here?

Mr. DOAR. Well—

Mr. RAILSBACK. Or have we retyped it or what?

Mr. DOAR. We have retyped it, but behind it you will see the form that we got it in and you will see our stamped numbers, WH, and that is our stamp when we received it and the numbers 002938 and 002939 which were stamped on it when we received it from the White House. And that was one of a number of documents that we received in connection with the plumbers file and it was represented that these were materials that had been turned over to Mr. Jaworski.

Mr. RAILSBACK. We did not receive this, however, from the bulging briefcase?

Mr. DOAR. No.

Mr. RAILSBACK. This was received because of the statement that they would make available to us materials that they had turned over to the grand jury? Do we know if the grand jury document was different than this, the document that was submitted to the grand jury?

Was it in the form of 61.5 or in the form of 61.6?

Mr. DOAR. We do not know that because we did not get any materials with respect to the plumbers operation from the grand jury. That was a different grand jury.

Mr. RAILSBACK. Would it not be rather interesting to see if the grand jury received a memo in the same altered form that we received it or whether it was in apparently the full, complete form?

Mr. DOAR. We will find that out if we can.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. The 61.5 memo, the one that has the paragraph 2 in it, Mr. Doar, that came from the Senate committee?

Mr. DOAR. That is correct.

Mr. FLOWERS. Now, was it from secret testimony before the Senate committee?

Mr. GILL. It was furnished in executive session by Mr. Young under a grant of immunity.

Mr. FLOWERS. Under a grant of immunity?

Mr. DOAR. Mr. Young never testified publicly before the Senate select committee, and so this material was furnished to the Senate select committee in executive session.

Mr. FLOWERS. Would this testimony have been available to the grand jury?

Mr. DOAR. No; it would not. Well, it would probably be available to the Special Prosecutor. My understanding is that when Mr. Young testified before the grand jury he produced this document.

Mr. RAILSBACK. Mr. Chairman?

Mr. FLOWERS. Well, the strange thing for me to try to understand is why we got an altered document when it should have been assumed that we would have got the first one in the first instance.

Mr. DOAR. Well, I cannot give you the explanation, but it does appear that when Mr. Young left the White House that he took a copy of this memorandum with him, and had it in his file because he produced it when he was called to testify.

Mr. FLOWERS. Which was before they furnished this to us though?

Mr. DOAR. Yes.

Mr. RAILSBACK. Would the gentleman yield?

Mr. FLOWERS. Certainly.

Mr. RAILSBACK. Could I just pursue that? I think this is rather significant, this whole thing. I am wondering if we know whether the original memo went to the grand jury under a subpoena that was directed to the President of the United States or to whom?

How was it supplied to the grand jury?

Mr. DOAR. Young furnished the unaltered version. I think that after Mr. Jaworski succeeded Mr. Cox as Special Prosecutor he made an arrangement with someone at the White House, Mr. Buzhardt or General Haig, that a representative of his staff could go to the White House and inspect one set of files, and that was the special investigating unit files.

And it is my understanding that a lawyer from the Special Prosecutor's office went to the White House and examined this file, which was entitled special investigating unit file, segregated, separate and apart from any individual assistants' files at the White House, and that this attorney went through this file and identified I believe 270 documents that he wanted to take out, and he took out these 270 documents, was permitted to have them photostated, and took them back for use in connection with their investigation.

Mr. RAILSBACK. Have we ever pursued who could have altered, yes, who could have altered the memo?

Mr. DOAR. There is some testimony in Mr. Young's grand jury testimony to the effect that he gave the originals of these documents to Mr. Ehrlichman in March 1973. And the second thing is that he was asked by the grand jury if he had altered the document, and he said, "I don't think so." That is as far as we have pursued it.

The CHAIRMAN. Who said that, please?

Mr. DOAR. Mr. Young.

Mr. RAILSBACK. I just wonder if we should pursue this a little bit? I think it is very significant if, you know, purposefully they altered something that was going to be under study by the grand jury.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. I think the gentleman from Illinois and the other members of the committee should also keep in mind in this connection that the Young document as such had already been delivered to the Senate select committee before the member of the staff of Mr. Jaworski's staff went over to the White House and selected 270 documents, including this, the document you are now questioning.

Mr. RAILSBACK. Could I just ask, Mr. Chairman, one final question? When Jaworski was dealing with Buzhardt or whoever he was dealing with at the White House, was it clear, was it clear that this was in lieu of a request of the President himself, or what? In other words, I am just wondering about that.

Mr. DOAR. Well, I think that Mr. Buzhardt made it clear on a number of occasions that the President would have final approval with respect to the examination of any Presidential papers, and that no one at the White House would have authority to permit inspection of any papers except for the President.

The CHAIRMAN. Mr. Doar, why don't we go on.

But, it might be of interest to the committee if we could ascertain just how it did come about there was produced for us a White House document which does not carry with it significant information that was presented in executive session before the Senate select committee.

Mr. OWENS. Mr. Chairman?

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Mr. Doar, can you give me the technical explanation of the difference in the size of the print and so forth between the document submitted under page 2644 of 61.4 or 61.5, and the original, an indistinct one submitted under 61.6? The document submitted before the Senate select committee bears an ostensible handwriting, initials, and so forth. The second page has an "E" and so forth, and is it the same document, but photographed differently?

Mr. DOAR. I cannot tell you for sure. But, it is the opinion of counsel here that it is just a photograph of the same document stepped down to get on the page.

Mr. GILL. Page 2644 is from the Senate select committee files, and it is from a printed version that reduces it down to a small book that is about 5 by 7 in size, and that reduces this.

Mr. SMITH. But it is your opinion that they are pictures of the same document only reduced?

Mr. GILL. No, sir, think one is the original. That is, if you will look at page 2644 it has Mr. Krogh and Mr. Young's initials on it at the top of the page, and the copy from the White House does not, which indicates it is the onionskin or file copy that was photostated.

Mr. JENNER. And also handwriting on the next page.

Mr. GILL. The copy from the White House lacks the letterhead too, which would also indicate it is the onionskin.

Mr. SMITH. Thank you.

Mr. OWENS. Mr. Doar, did Mr. Young or Mr. Krogh ever testify about paragraph 5? The White House version actually has the approved and disapproved line, whereas Mr. Young's did not.

Mr. DOAR. Mr. Young did not testify to this. Mr. Ehrlichman did. There is a national security reference at paragraph 5, and it was removed by the SSC, and also removed by the White House.

Mr. OWENS. But the SSC saw it and removed it?

Mr. DOAR. Yes.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. One final question on this area. I believe the staff member has said that 2644 represents the original because it has the White House at the top, and then the one received from the White House must be the onionskin. But, you said earlier that Mr. Young took a copy of the original with him, and this is the copy that was submitted to the Senate committee. It is not the original that he gave to the Senate committee?

Mr. DOAR. No, it is a photostat of the original. You see, the original went from Mr. Krogh and Mr. Young to Mr. Ehrlichman, and then Mr. Ehrlichman wrote on it and returned it to Mr. Krogh and Mr. Young, and Mr. Young had that in his possession.

Mr. COHEN. OK. All I am trying to say is that the White House still had available to it the original, and Young just had a copy of that, and the copy that we received here would be the onionskin copy, although they had the original in their own files?

Mr. DOAR. That is right, because Mr. Young's testimony is that he gave the original to Mr. Ehrlichman in March, and so this must be a copy of a photostat of the original.

Mr. COHEN. Thank you.

Mr. JENNER. Mr. Chairman?

Mr. McCLORY. Mr. Chairman, could I just ask this?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. A disclosure of the subject matter that we are discussing now would be highly prejudicial to pending cases?

Mr. JENNER. That is right.

Mr. McCLORY. Is that not true? So that it is vital that we do not discuss this publicly after we leave this committee meeting?

Mr. JENNER. That is correct, sir.

Mr. Chairman, before we pass to the next tab, there was an earlier discussion of covert or overt operation, and I direct the committee's attention to tab 61.4, the printed page 2545, at the bottom, at 61.4, 2545, at the bottom of that page where Mr. Dash said :

Well now, as a matter of fact, Mr. Ehrlichman did not personally approve in advance of the covert entry into Ellsberg's psychiatrist's office for the purpose of gaining access to the psychoanalyst's reports?

Mr. EHRLICHMAN. A covert entry?

Mr. DASH. Yes.

Mr. EHRLICHMAN. I approved a covert investigation. Now, if a covert entry means a breaking and entering, the answer to your question is "no."

The CHAIRMAN. Might I call the committee's attention to the fact that we have, as I understand it, besides this volume, we have three other volumes to present today. Is that correct, three other books?

Mr. DOAR. Yes, we do. Paragraph 62.

Mr. GILL. By memorandum dated August 11, 1971, Young contacted the State Department to enable Hunt to review and obtain copies of State Department cable files covering Vietnam during 1963. At an earlier date shortly after Hunt was employed at the White House, Hunt and Colson had talked to Col. Lucien Conein, a retired CIA employee, formerly stationed in Vietnam, who was familiar with the events leading up to the overthrow and death of South Vietnamese President Diem in 1963.

Hunt has testified that on the basis of the material in the State Department files, and apparent omissions from the files, he concluded that there was reason to believe that the Kennedy administration had been implicitly responsible for the assassination of Diem and his brother.

Hunt fabricated cables designed to implicate the Kennedy administration in the deaths. Hunt then took steps to have the cables publicized. Hunt has testified that he was acting under the instructions of Colson. Colson has denied this.

The copies of the State Department cables and the forged cables were taken from Hunt's safe in June 1972, and delivered to L. Patrick Gray, who later destroyed them.

Mr. DOAR. Mr. Hunt has testified at 62.4 at page 3669 that one of the purposes of this conversation with Colonel Conein was to secure information that would be derogatory against Dr. Ellsberg. That is at the top of the page, and it is 62.4 at 3669.

Mr. JENNER. About the first 10 lines at the top.

Mr. GILL. The conversation with Conein was recorded, and it is at tab 42.2. You will notice in it that one person is called Fred Charles, and Colson has said he used that identification on the telephone to Colonel Conein.

Mr. DOAR. Tab No. 63.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Could I ask, I understand the President made a reference to these cables in some public statement. Would you be good enough to supply us that statement in this tab?

Mr. DOAR. I do not believe the President made reference to the cables. He made reference to the possible involvement or implication of the Kennedy administration in this. We can do that.

Ms. HOLTZMAN. I would appreciate that.

Mr. DOAR. He did not make reference to the cables.

Mr. HOLTZMAN. I understand. Thank you.

Mr. DOAR. And there is no indication that the President knew about those cables. Tab 63.

Mr. GILL. On August 12, 1971, Young, Hunt, and Liddy met with the CIA staff psychiatrist who had directed the preparation of the Ellsberg psychological profile to discuss further development of the profile. Young told the psychiatrist of Ehrlichman's and Kissinger's personal interest in the profile and stated that the President had been informed of the study.

Mr. DOAR. Tab 63.1 is the CIA's staff psychiatrist's affidavit in which paragraph 3, which is at 63.1 about the 8th to the 9th line, the psychiatrist relates about this meeting on August 12, and how Mr. Young had stated that the Ellsberg study had the highest priority, had been requested by Mr. Ehrlichman and Dr. Kissinger, and that the President had been informed of the study. Tab 64.

Mr. GILL. In discussions in mid-August 1971, concerning the plan to gain access to Dr. Fielding's files on Ellsberg, Krogh and Young told Hunt and Liddy not to be present when the operation was executed because of their association with the White House.

During this period Hunt went to Miami, Fla., where he recruited Bernard Barker for the operation. Barker had worked with Hunt in connection with the Bay of Pigs invasion. Barker then recruited Felipe De Diego and Eugenio Martinez, who had participated in intelligence work with Barker on previous occasions.

Mr. DOAR. Mr. Krogh filed an affidavit which is at 64.1 and consists of a number of paragraphs. Paragraph 33 at the second page of that affidavit says that, "Affiant," and that is Mr. Krogh, "attached a condition to the mission that Mr. Hunt and Mr. Liddy were not to be in the close proximity of Dr. Fielding's office."

And also, Mr. Young also verified that in his grand jury testimony. And Mr. Hunt in his testimony before the Los Angeles grand jury said that the reason why he was not to be close by was because he and Liddy were associated with the White House. Tab 65.

Mr. GILL. On or about August 19, 1971, Daniel Schorr, a television commentator for CBS News, was invited to the White House to meet with Presidential aides in connection with an allegedly unfavorable news analysis by Schorr of a Presidential speech. Thereafter, while travelling with the President, Haldeman directed Lawrence Higby, one of his aides, to obtain an FBI background report on Schorr. The FBI, following Higby's request, conducted an extensive investigation of Schorr. The FBI immediately interviewed 25 persons in 7 hours, including members of Schorr's family, friends, employers and the like.

Schorr never consented to such an investigation. Following public disclosure of the investigation, the White House stated that Schorr was investigated in connection with a potential appointment as assistant to the Chairman of the Environmental Quality Council. He was never appointed.

Haldeman has testified that Schorr was not being considered for any Federal appointment, and that he could not remember why the request was made.

Mr. DOAR. Paragraph 66.

Mr. GILL. On August 19, 1971, Krogh and Young informed Ehrlichman, that Colson had been instructed by the President to get something out on the Pentagon Papers. On August 24, 1971, Ehrlichman forwarded to Colson a memorandum on Leonard Boudin, Daniel Ellsberg's attorney, which was prepared by Howard Hunt.

Colson released the Hunt memorandum to a newspaper reporter.

Mr. DOAR. Tab 66.2 is a memorandum from Bud Krogh and David Young to John Ehrlichman dated August 19, and it reads as follows, and this is at 66.2:

Enclosed are three memoranda. The first is a preliminary report on where we are on the Ellsberg matter; the second is a report on the investigations we have run on the Ted Szulc article; and the third is a general memorandum on the press and the bureaucracy.

We were also told by Colson that the President was after him to get out something on the Pentagon Papers. Howard Hunt is in the process of trying to put something together on Boudin, Ellsberg's attorney, and we will keep you posted on any developments.

In 66.3 is Ehrlichman's memorandum to Colson which is the memorandum that Hunt prepared about Boudin, and Ehrlichman says:

This attached memorandum should be useful in connection with the recent request that we get something out on Ellsberg.

Paragraph 66.6 is the proceedings before Judge Gesell when Mr. Colson plead guilty on June 3, 1974. And at page 6 of that memorandum Mr. Merrill is advising the court as to what the Government would be prepared to prove in this case. And he states:

In the middle of August, as the information suggests, there was a memo prepared directly by someone else, but after discussions with Mr. Colson about Mr. Ellsberg's attorney; which can only be described as a scurrilous and libelous memorandum. It was prepared with the knowledge and intent to damage Daniel Ellsberg, and with the recognition that such a memorandum could have an adverse effect on Ellsberg's trial.

The memorandum, after it was finally prepared, was transmitted by others in the White House to Mr. Colson, with the suggestion that it be gotten out to the newspapers; which, in fact, it was by Mr. Colson on the 26th day of August 1971.

And at the bottom of the page Mr. Colson indicated to the court that he accepted that statement for the purpose of his plea.

That completes this book, Mr. Chairman.

Mr. WIGGINS. May I ask counsel a question, please?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, at some point in the next book, perhaps, do you make reference to and include a statement of Bud Krogh made to the court on the occasion of his plea of guilty?

Mr. DOAR. We use parts of his statement which are included, but not all of it. We have it all available.

Mr. WIGGINS. Well, as I remember, he said something to the court about the lack of Presidential knowledge, or something I read in the newspapers. Is that part included somewhere in the presentation?

Mr. DOAR. I am not sure that statement contains that, but we will check that and have it for you after lunch, the entire statement.

Mr. WIGGINS. Thank you.

Mr. DENNIS. Mr. Doar, at some time are you going to make available to the committee the transcript which has been furnished of this

conversation of April 4, 1972, which is referred to on page 4 of the President's letter to the chairman?

Mr. DOAR. Yes, we will.

Mr. DENNIS. I think that should be done, inasmuch as apparently it did not justify suggestions which were made here earlier that there might have been some discussion about intelligence operations in the Watergate matter. Now that we have that, I think it would be appropriate to have it in our record.

Mr. DOAR. We intend to do that, Mr. Dennis. Tab No. 67. Oh, excuse me a second.

Mr. OWENS. Mr. Doar, on Daniel Schorr, when you indicate the White House said that he had been under consideration for an appointment as assistant to the Director of the Council on Environmental Quality, was that Ronald Ziegler saying that? I seem to remember the President commenting personally on that, is that right?

Mr. DOAR. Mr. Malek made a statement, and we think Mr. Ziegler made a press release, but that is the extent. But, the President did not personally comment except perhaps through Mr. Ziegler. We do not know that. Tab 67.

Mr. GILL. On August 25, 1971, Hunt requested and received from the CIA alias identification and disguise material for Liddy and a camera concealed in a tobacco pouch. Later that day Hunt and Liddy flew to Los Angeles for the purpose of obtaining information about Ellsberg and the Pentagon Papers disclosure.

While in Los Angeles, Hunt and Liddy sought to determine the feasibility of an operation to gain access to Dr. Fielding's files. Hunt and Liddy took photographs of the interior and exterior of Dr. Fielding's office.

Upon Hunt's return from Los Angeles on either August 26 or 27, 1971, a CIA employee met Hunt at the airport, had the film processed and returned the prints to Hunt the same day. Hunt and Liddy showed the photographs to Krogh and Young and reported that a surreptitious entry was feasible.

Mr. DOAR. I would just like to call the committee's attention to 67.5, which is another page of grand jury testimony, Mr. Ehrlichman's testimony before the grand jury out in Los Angeles.

And again, perhaps we should have included some additional pages before and after the bracketed part, and what we will do, we will get for the committee the entire testimony so that the committee members will have it in its entirety. But, on this particular page, there is again this testimony to the effect that Hunt and Liddy were conducting an investigation, and that Mr. Krogh advised Mr. Ehrlichman that it was his recommendation—

That we go forward with the use of these two men to go to California, and see if they could develop some facts which Krogh felt he badly needed in defining the scope of the apparent conspiracy, and some of the missing details as to how the Pentagon Papers had actually been obtained, duplicated, and disseminated.

And there is the question:

I sense from your answer that he was then making a recommendation to you in that regard, is that correct?

Answer. That is correct.

Question. And did you approve that recommendation?

Answer. I believe the recommendation was discussed specifically with the President before it was approved.

Question. But you—

Answer. No, I—as I say, I believe he—he specifically approved it. And it is my recollection that he either discussed it with—well, I know he discussed it with Mr. Hoover.

Mr. WALDIE. Could I ask a question there, Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, this case in California has been dismissed, has it not?

Mr. DOAR. Yes, it has.

Mr. WALDIE. Is this grand jury testimony then privileged?

Mr. DOAR. No.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. The comment on discussing it with Mr. Hoover, do I understand the President discussed this with Mr. Hoover, the possibility of the covert operation? Is that right?

Mr. DOAR. That is not—the fact that Mr. Hunt and Mr. Liddy were going to California to conduct some kind of an investigation.

Mr. MEZVINSKY. Supposedly Mr. Hoover was on notice of this?

Mr. DOAR. That is Mr. Ehrlichman's testimony.

Mr. MEZVINSKY. This is the first time, you know, we have got the FBI and Mr. Hoover on notice of this operation concerning this.

Mr. DOAR. Well, no; Mr. Hoover was asked, you recall, there had been earlier memorandums where Mr. Hoover, the President wrote Mr. Hoover and asked him if he would furnish information to this special investigation unit in connection with the Ellsberg file, and Mr. Hoover replied to Mr. Krogh and furnished him with some information. There was an attachment to the letter in which apparently the President had requested interviews from 17 people, including Daniel Ellsberg. And Mr. Hoover replied and said that those interviews were going forward, that six had been conducted, but they were not interviewing Mr. Ellsberg because of the relationship, I think, I suspect, with his attorney. He was under indictment at the time.

Mr. MEZVINSKY. OK.

Mr. DENNIS. Mr. Doar, the fact that the California case has been dismissed, do you feel that that makes any difference in the privileged status in the grand jury testimony in that case?

Mr. DOAR. My understanding, Mr. Dennis, is that the grand jury testimony has been made public in California.

Mr. DENNIS. Well, if it has been made public I would agree with you. I suppose all privilege is waived. But, the mere fact that a case was dismissed would not change its status any as far as I know, would it?

Mr. GILL. Mr. Dennis, under California practice, the district attorney tells us that before the trial all grand jury testimony is publicly released and this has been made public and was furnished by the district attorney to us.

Mr. DENNIS. Well, of course, that is a different situation. I do not know California practice. But, if it is made public I am willing to admit it is not any longer privilege.

Mr. JENNER. Mr. Dennis, I am familiar with the California prac-

tice. I have defended criminal cases out there, and that is the practice, and Mr. Wiggins would be able to confirm it with you. This is a State court practice, not the Federal practice.

Mr. DENNIS. Of course, it would not change its confidential character as far as our rules are concerned, one way or the other.

Mr. JENNER. That is correct.

Mr. DOAR. That is correct.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. My understanding is that not all of the charges in California have been dismissed. The conspiracy charges have been dismissed, but there are still perjury charges against Mr. Ehrlichman pending.

Mr. HOGAN. Mr. Chairman, are we implying that because some of the material in these books might be public that they are not covered by the rules of confidentiality?

The CHAIRMAN. No; not at all.

Mr. HOGAN. Thank you.

Mr. DOAR. Tab 68.

Mr. GILL. On August 26, 1971, Young sent a memorandum to Ehrlichman stating that the plan was to develop slowly a negative picture around the whole Pentagon study affair—preparation to publication—and to identify Ellsberg's associates and supporters on the New Left with this negative image. The memorandum referred to material to be developed from the pre-Hunt/Liddy project No. 1. The memo stated that it would be absolutely essential to have an overall game plan developed for its use in conjunction with a congressional investigation.

On the following day Ehrlichman sent a memorandum to Colson requesting a game plan for the use of materials obtained from the Hunt/Liddy special project No. 1.

Mr. DOAR. Memorandum 68.2 and 68.3, the committee members may wish to make a note of. You will note that at 68.2 at page 2646 the subject of the memorandum is entitled "Status of Information Which Can Be Fed Into Congressional Investigation on Pentagon Papers Affair." And the material that was read in the statement of information is found at the bottom paragraph of page 1 and the top of page 2 of that.

The plan was to develop slowly a very negative picture around the whole Pentagon Study affair, and then to identify Ellsberg's associates and supporters on the new Left with this negative image.

Mr. JENNER. That is tab 68.2.

Mr. WIGGINS. I just wondered whose plan? It mentions our colleagues, Hébert and Arends, and I wondered if that was their plan?

Mr. DOAR. They refer to the Hunt and Liddy plan. It seems to me it is a plan in connection, I guess, originated with Colson. If you look at the second to last paragraph of page 2650:

If there is to be any damaging of Ellsberg's image and those associated with him, it will, therefore, be necessary to fold in the press planning with the congressional investigation. I mentioned these points to Colson earlier this week, and his reply was that we should just leave it to him and he would take care of getting the information out.

Tab 68.3 is the memorandum dated August 27 from Ehrlichman to Colson which indicates, or it is labeled Hunt/Liddy Special Project No. 1, and it reads:

On the assumption that the proposed undertaking by Hunt and Liddy would be carried out and would be successful, I would appreciate receiving from you by next Wednesday a game plan as to how and when you believe the materials should be used.

Paragraph 69.

Mr. GILL. On August 27, 1971, CIA Deputy Director Cushman telephoned Ehrlichman to request that Hunt be restrained in his requests to the CIA for further assistance. Hunt had requested from the CIA such items as a stenographer, credit cards and an office in New York with a phone listed in New York that could be monitored in Washington. Ehrlichman agreed that the CIA need not meet Hunt's additional requests.

Mr. DOAR. Paragraph 70.

Mr. GILL. Krogh and Young had testified that they telephoned Ehrlichman at Cape Cod on or about August 30, 1971, and reported that Hunt and Liddy had returned from California and reported that a covert operation could be undertaken and would not be traceable. Ehrlichman gave his approval. Ehrlichman has testified that he does not recall receiving this telephone call.

Mr. DOAR. If the committee would look at Mr. Krogh's testimony before the grand jury on January 30, 1974, at page 4748.

The CHAIRMAN. What page is that, Mr. Doar?

Mr. JENNER. Pages 47 and 48 of the material we furnished in the envelope.

The CHAIRMAN. Pages 47 and 48?

Mr. DOAR. Pages 47 and 48. This is Mr. Krogh's testimony first.

Mr. JENNER. On January 30, 1974.

Mr. DOAR. After Mr. Hunt and Liddy had gone out to California the first time, as the committee members recall, they took pictures of Dr. Fielding's office and Dr. Fielding's parking lot, at line 18 this question was asked:

There is one other area I think I may have omitted, and that is when Mr. Hunt and Liddy had shown you these pictures after their first trip out there and they had come back and talked about it with you, did you or Mr. Young talk to Mr. Ehrlichman at any time after that and before Mr. Hunt and Liddy went out on their last trip?"

And on the next page there is this reference.

There was a telephone conversation I believe, the very end of August, just before they departed for California from my office, to Mr. Ehrlichman in Cape Cod where he was vacationing.

Q Did you place that phone call?

A I believe it was placed by my secretary, yes, sir.

Q What was the purpose of that telephone call?

A The purpose of the phone call was to advise him that the covert operation—I am not sure what terminology I used on the phone—probably the plan that we had discussed could be carried out, if all conditions were met. I was trying to convey that I felt that the operation could be executed without being traceable, and I suppose that this represented my assurance to him that it could be carried out without it being traceable to the White House.

Q Did he ask you any questions?

A Not that I recall. He might have.

Q If he did, you have no recollection of it?

A That is correct.

And then if you will go to 57 and 58 of Mr. Young's testimony on August 22, 1973. 57 and 58 of Mr. Young's testimony on the morning of August 22, 1973, and if you look at the top of the page:

You have mentioned in passing that there was a discussion with Mr. Ehrlichman some time between the two trips, so I take it you are now referring to the period of time after this conference between yourself and Mr. Krogh and Mr. Hunt and Liddy describing what they had done and showing you the pictures and what they proposed to do, and there was some communication with Mr. Ehrlichman?

A That is correct.

Q When and how did that take place?

A It would surely follow a discussion Mr. Krogh and I had with Mr. Hunt and Mr. Liddy. We went to Mr. Krogh, or we were in Mr. Krogh's office, and when I say shortly, it was later the same day or the next morning. Mr. Krogh placed a phone call to Mr. Ehrlichman who was away on vacation, I believe somewhere in Nantucket, or Martha's Vineyard in Cape Cod and the tenor of essence of the conversation was simply to tell him that Mr. Hunt and Liddy had returned from California, they felt a covert operation could be undertaken, that it was feasible. And his reaction was or response was what did we think. And Mr. Krogh said he thought that we should continue on, I concurred. And Mr. Ehrlichman said fine, and Mr. Krogh should let him know what the results were.

And then the question was:

You mean the results of the operation?

A The results of the operation. I do not know how much detail was discussed. I don't think it was a very long discussion. I don't recall it was a very long call.

Q Do you have a recollection of either you or Mr. Krogh saying to Mr. Ehrlichman that Hunt and Liddy would not be personally involved in going into the office, something to the effect that they would have ex-CIA associates?

A That could very well have been said because it was a regular line.

Q You mean a regular telephone line?

A A regular telephone line. We didn't go into very much detail, but there was probably, but there probably was something along the line of assurances that would tie back into Mr. Ehrlichman's statement that if it was done on assurance that it was not traceable.

Q Do you have a recollection of mentioning to Mr. Ehrlichman in view of these pictures something to the effect that not only had Hunt and Liddy been out there looking, but they had actually been in the office without any problem?

A I can't say that I specifically recall that. That could have been, yes. That could have been mentioned."

One of the pictures that was taken on the first trip out to California was a picture of the interior of Dr. Fielding's office.

Mr. GILL. It was taken with a concealed camera in the tobacco pouch.

Mr. DOAR. Tab No. 71.

Mr. EDWARDS. Mr. Doar, how had they gotten in the office?

Mr. GILL. They talked the cleaning woman into letting them into it on the pretext of delivering something. Dr. Fielding was not there at the time.

Mr. JENNER. They had a large suitcase.

Mr. DOAR. Mr. Jenner, if I could explain that. The first time, the first time they went out they talked the cleaning lady into going into the office, and she opened Dr. Fielding's office and they went in and took pictures inside of the office and brought them back and had them developed on about the 27th of August and showed them to Mr. Krogh and Mr. Young.

Mr. EDWARDS. Is that a violation of the law?

Mr. DOAR. Well, yes. It is an unlawful entry into an office without permission. It is an illegal trespass.

The second time they went in to make the entry, two of the Cubans took the equipment in a satchel, and the cameras, and they went and purported to be delivering some material to Dr. Fielding's office, and

they were permitted to go in the office and leave the pack, the suitcase, in the office. And then subsequently that night some of the men broke into the office, broke the outer door and the inner door and got in the office and then used the equipment that was already in there to make the entry into the file cabinet and the desk drawer, and to photograph the office. Tab Number 71.

Mr. GILL. Prior to September 2, 1971, either Krogh—according to Krogh—or Ehrlichman—according to Colson—requested Colson to obtain \$5,000. The money was to be used to finance the Fielding operation.

Colson requested Joseph Baroody, a Washington public relations consultant, to deliver \$5,000 to Krogh, who turned it over to Liddy. Several weeks later Colson caused Baroody to be repaid with \$5,000 from a political contribution by a dairy industry political organization.

Mr. DOAR. We have already referred to this matter in the dairy testimony. Mr. Colson puts it just a week before Labor Day that he was asked to get this money and did get the money, turned it over, and it was this money that was used to finance this operation. Tab 72.

Mr. GILL. On or about September 2, 1971, Hunt and Liddy flew to Chicago where they purchased cameras and walkie-talkies. Then they flew to Los Angeles where they met Barker, Martinez, and De Diego and purchased a crowbar, glasscutter, and other burglary tools. On the night of September 3, 1971, Barker, Martinez, and De Diego entered Dr. Fielding's office by breaking a first floor window of the building, and breaking open the door to Dr. Fielding's second floor office. The file cabinets and the desk in Dr. Fielding's office were broken into and searched.

Liddy maintained a watch outside of the building, while Hunt, who was in communication by walkie-talkie, watched Dr. Fielding's residence. Barker, Martinez, and De Diego have testified that they did not locate any file on Ellsberg, and that no information was obtained. Dr. Fielding has testified that his file cabinet had been broken into and the file on Ellsberg withdrawn.

Mr. DOAR. We have not been able to determine whether or not material was actually taken from Dr. Fielding's office, but Dr. Fielding does describe how he knows that the file was examined.

Mr. GILL. He stated that he had two lengthy documents, one of about 25 pages and one of about 30 pages or 35 pages on his analytical sessions with Dr. Ellsberg, and that these were in a manila envelope inside a typical file folder. And that when he came to his office the following morning, when the police summoned him, the bottom drawer of his file cabinet was open. The manila file folder that was related to Ellsberg was lying out on top of the other files in the drawer, and that the paper material in it, the pages, had been removed from the internal envelope and were lying on top of it, and from this he concluded that the Ellsberg material had, in fact, been seen, and he described it as showing evidence of being thumbled or pawed over.

Mr. DOAR. Tab No. 73.

Mr. GILL. On or about September 7, 1971, Hunt and Liddy delivered reports to Krogh and Young which included photographs of the physical damage to Dr. Fielding's office. Hunt and Liddy recom-

mended a further operation to seek the files at Dr. Fielding's home. Krogh reported these facts to Ehrlichman. Ehrlichman has testified that the action far exceeded the authorization he had given, and disapproved any further covert activity.

On the same day, Hunt testified that he sought to discuss the entry into Fielding's office with Colson. Colson testified he declined to discuss the matter.

Mr. DOAR. The testimony with respect to Hunt's meeting with Colson is found at 73.1, Mr. Hunt's version, and Mr. Colson's version is at 73.5. And at page 661 at the top, at 73.5, Mr. Colson testifies, and this is following the Labor Day weekend. He said it was 1 o'clock in the afternoon. I am just beginning, starting at line two. He said 1 o'clock in the afternoon Mr. Hunt's name appears in the book. He said:

My recollection is slightly different than Mr. Hunt's. I recall that I had just come—come out of the President's office. It was not—it was midday—well, it was during the day, according to the date book, according to my own records it was 1 o'clock. I had just come out of the President's office, and I was in a great hurry. He had given me a number of things to do, and it was a very busy—I had had a very busy morning.

Mr. Hunt was in my outer office. I believe he followed me into my office and said to me something to the effect—these aren't—I can't say these are precise words, but something to the effect "I have a half hour before I have to give a briefing on what we were up to", or "what we did this weekend and I would like to tell you about it." And I said "I don't have time, it's really not my area, I am very busy. And I have got to get on to something else."

He was carrying an envelope which he started to open and I said "I just don't have time to talk to you right now." And he left.

Then he was asked:

Can you tell us whether or not you saw what it was or part of what it was that he had in the envelope?

A. I think he had—as he started to open the envelope he had photographs in it. But, I did not—I don't believe that I saw the photographs.

Tab No. 74.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. One point I think ought to be made. The tab indicates that Mr. Ehrlichman testified that the activity was in excess of his authority. I think reference ought to be made to Bud Krogh's testimony before the grand jury that that also is his understanding at page 45 of the material which has been circulated, the January 30, 1974. It is not a tab, but it is the separate material.

But, in this, Bud Krogh is testifying as to Mr. Ehrlichman's state of mind, page 45.

Mr. JENNER. That is Mr. Krogh's testimony of January 30, 1974.

The CHAIRMAN. Would you identify the page?

Mr. WIGGINS. It is page 45, Mr. Chairman.

Mr. DOAR. Page 45.

Mr. WIGGINS. Does counsel have it before him?

Mr. DOAR. Yes.

Mr. WIGGINS. Well, I only wish to make the point that this is not just Mr. Ehrlichman's appreciation of what the facts were, but that it is supported by Mr. Krogh in his independent testimony.

Mr. DOAR. I think that it is a fair statement, Mr. Wiggins. But the question is whether or not the breaking up of the furniture was what was in excess of the authority, or whether it was the surreptitious

entry, and I think that from the context of Mr. Krogh's testimony that the committee members will have to read it to decide whether it was the fact that there was such havoc in the office of Dr. Fielding which was the thing that Krogh thought was in excess of his authority.

Mr. WIGGINS. I merely wanted to make reference to the testimony. The members can analyze it.

Mr. OWENS. Page 43 Mr. Krogh spells that out as a matter of fact.

Mr. GILL. That discussion runs all the way from 43 to 47 on that meeting of Mr. Ehrlichman and Mr. Krogh.

Mr. DOAR. Tab No. 74.

Mr. LATTA. Mr. Doar, Mr. Doar?

Mr. DOAR. Yes, sir.

Mr. LATTA. I would like to call your attention to tab 73.1 at page 309 of Mr. Hunt's grand jury testimony at the bottom of the page. The question is: "As you sit here now, what is your best judgment as to whether or not Mr. Colson had any information prior to the time of the Fielding break-in that you and Mr. Liddy were making arrangements to do that very thing?" And Mr. Hunt's answer was: "I would say that he had no personal knowledge."

Is that the fact?

Mr. DOAR. Well, that is what Mr. Hunt testified to.

Mr. LATTA. Thank you.

Mr. DOAR. Tab 74.

Mr. GILL. At 10:45 a.m., on September 8, 1971, Ehrlichman met with Krogh and Young and they discussed the Fielding break-in. At 1:45 that afternoon Ehrlichman telephoned the President and between 3:26 p.m. and 5:10 p.m. Ehrlichman met with the President.

Ehrlichman has testified that he did not tell the President about the Fielding break-in. On September 10, 1971, Ehrlichman met with the President from 3:03 to 3:51 p.m. and at 4 p.m. Ehrlichman met with Krogh and Young.

Mr. DOAR. Tab 74.1 is Mr. Ehrlichman's testimony before the California grand jury where he testifies positively that after having been informed by Mr. Krogh of the break-in that he did not inform—that he met with the President or that first of all that he talked to the President after he had been informed, but that he did not inform the President of it. The President learned of it from someone else at some time much later. Tab. No. 75.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. It says on 74.2, reading the conversations between the President and John Ehrlichman, "September 8, September 10, received from White House." What does that mean? Do we have a transcript of these conversations?

Mr. DOAR. No. These are logs. These are conversations that would be pertinent or the committee might consider.

Mr. RANGEL. Is this a part of a request in the subpoenaed materials?

Mr. DOAR. We have not requested it yet, but some of the material is material the committee might wish to request or subpoena in connection with clearing up some of the matters we presented here today.

Mr. RANGEL. Do you intend to recommend as relates to these conversations?

Mr. DOAR. Yes, we do. Tab 75.

Mr. GILL. In August or September 1971, Caulfield submitted to John Dean a written proposal for a political intelligence operation entitled Operation Sandwedge, with a budget of \$511,000. The proposal specified both clandestine offensive and defensive operations including a black bag capability. The budget included an item of \$15,000 for electronic surveillance equipment. During September and October 1971, Strachan informed Haldeman that the proposal had been considered by Dean and Attorney General Mitchell.

Haldeman instructed Strachan to arrange a meeting with Mitchell to discuss pending matters including the Sandwedge plan. On November 4, 1971, Haldeman, Mitchell, Magruder, and Strachan discussed the plan. Operation Sandwedge was never instituted. On November 24, 1971, Mitchell discussed with Caulfield a position at CRP.

Mr. DOAR. We have several times, during the course of the inquiry, had members of the committee ask about our Operation Sandwedge, and this was a plan, a proposal that was never approved.

The proposal did include an item of \$15,000 for equipment, electronic surveillance equipment, and that is found at tab 75.2 on page 1123 where the plan was discussed with Mr. Haldeman and Mr. Mitchell and Mr. Magruder and Mr. Strachan, and it is later discussed in some of the edited White House transcripts of the April 1973 conversations. Tab No. 76.

Mr. GILL. Between September 1971 and June 16, 1972, Donald Segretti hired operatives to infiltrate the campaign of various Democratic candidates, placed Senator Edmund Muskie under physical surveillance, disrupted campaign activities, and printed false and serious articles attributed to various Democratic candidates. These publications, in violation of 18 U.S.C. section 612, were mailed by Segretti to Dwight Chapin, the President's appointments secretary.

During this same period, CRP employed individuals to infiltrate the Muskie, Humphrey, and McGovern campaign staffs. These individuals were assigned code names such as "Sedan Chair II" and "Fat Jack" and supplied documents and intelligence information about the Democratic campaigns.

Strachan has testified that a Sedan Chair II report was included in a political matters memorandum sent by Strachan to Haldeman.

Mr. DOAR. Tab No. 77.

Mr. LATTA. Question.

I am wondering why this is inserted here as I have not ever heard, I have not ever heard of anybody alluding that the President had anything to do with Segretti's activities. Have you got information to that effect?

Mr. DOAR. No, we do not.

Mr. LATTA. Well, why insert it?

Mr. DOAR. Well, we inserted it by reason of background information so the committee members would have this information in connection with subsequent conversations with respect to Chapin's involvement that we presented to the committee with respect to the Watergate matter.

Mr. LATTA. Well, that is going the round robin or round the barn, the long way to get that in there.

Mr. DENNIS. Would the gentleman yield?

Mr. LATTI. I'll be happy to.

Mr. DENNIS. I was just wondering about this same thing. The last part. We talk about Operation Sandwedge, here, something that was never instituted.

Why would something that was never instituted be relevant, and particularly in a situation where we cannot even ask counsel, as I understood the last Chair's ruling, who he is interviewing at this time that maybe is relevant to something that we are talking about.

Mr. DOAR. Mr. Dennis, I tried to explain that Mr. Haldeman described this plan as the grandfather of the Liddy plan. Several members of the committee during the course of the inquiry have asked about the background of this plan and we furnished it to you for that reason. Tab No. 77.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Dennis, also another reason I thought that it should be included is so that you would have affirmative evidence that Sandwedge was not, that plan was not accepted and followed through.

Mr. GILL. No. 77, on November 1, 1971, John Ehrlichman was informed by Egil Krogh and David Young in a memorandum that the prosecution of Daniel Ellsberg would be more difficult because (1) Ellsberg gave classified information to the press, not to a foreign power; (2) a few months after Ellsberg went public, the Department of Defense published virtually the same material; and (3) there had been no apparent damage as a result of Ellsberg's disclosures.

Mr. DOAR. This information is contained at 77.1, page 1, to the effect that Ellsberg gave classified information to the press and not to a foreign power.

This is a memorandum dated November 1, 1971. No. 78.

Mr. GILL. Prior to November 9, 1971, members of the Plumbers unit had conversed with the CIA staff psychiatrist, who had directed the preparation of the Ellsberg psychological profile and had sent materials to the CIA to be used in the development of that profile.

On November 9, 1971, CIA Director, Richard Helms, wrote to David Young stating that the CIA's involvement in preparation of the Ellsberg profile should not be revealed in any context. On November 12, 1971, the CIA delivered to the Plumbers an expanded psychological profile of Daniel Ellsberg.

Mr. DOAR. Tab 78.1 and 78.2 are memorandums with respect to this expanded psychological profile of Daniel Ellsberg.

Tab. 78.3 is Mr. Helms' letter of November 9 where he delivers the two papers to David Young.

And 78.4 is the undated assessment which was delivered. Paragraph 79.

Mr. RANGEL. Excuse me. Mr. Chairman.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Does this 78.4, which is the CIA document, does this support the fact that the CIA did in fact, receive materials from the doctor's office? I have not read it, but—

Mr. GILL. It is not clear that it received materials from the doctor's office. It is not stated in the assessment itself.

Mr. DOAR. Paragraph 79.

Mr. GILL. Incidentally, we do not know as a fact that they did receive materials from the doctor's office, the CIA.

Mr. RANGEL. That was my question.

Mr. GILL. On December 14, 1971, after publication in a newspaper column of facts about the U.S. position on the India-Pakistan war, Krogh and Young were assigned to investigate the disclosure.

Krogh was dropped from the unit on December 20, 1971, after he refused to authorize specific wiretaps. Subsequently, four FBI wiretaps were authorized and instituted, and Young pursued the investigation that coincidentally uncovered the fact that classified documents were being passed to the Joint Chiefs of Staff from the Military Liaison Office at the National Security Council in the White House. The FBI files contain no written instructions or authorizations from either the Attorney General or the White House. The records of these taps were kept completely isolated from regular FBI files, and they were not entered in the electronic surveillance indexes.

Young rendered a report on the investigation in early January 1972, but the taps continued past that date, the last being terminated June 20, 1972. The Liaison Office was abolished.

Mr. DOAR. If you look at tab 79.6, which is the February 26, 1973, attachment to 79.6, which follows page 4 of the original memo, you will see at page 2 of that memo the description of the wiretaps that occurred in December 1971 to the effect that the Attorney General contacted Mr. Felt, and asked that a wiretap be instituted immediately on Yeoman Radford, that the instruction had come directly from President Nixon, and that after clearing the matter with Mr. Hoover, Felt instructed that a wiretap be instituted, and this was done.

And then subsequently other wiretaps were placed on other employees, and they were continued through the middle of February, and another in April, and the last one was discontinued in June.

And then at the top of page 4 there is the statement: "Although we have a careful record of the various stages of coverage of Charles Radford—

Mr. HUNGATE. Where is that?

Mr. DOAR. The last page on tab 79, 79.6, the last page. There it says:

Although we have a careful record of the various stages of the coverage of Charles Edward Radford, II, we have no written instructions or authorizations from either the Attorney General or the White House concerning this matter. Our records have been kept completely isolated from the other FBI records, and there are no indices whatsoever relating to this project.

Tab No. 80.

Mr. COHEN. What is that name deleted on that page? Was that deleted by you?

Mr. GILL. You are on the last page?

Mr. COHEN. The last page.

Mr. GILL. That is just a secretary's name, and it is just somebody who has retired, and would be bothered if the name were listed.

Mr. DOAR. Tab No. 80.

Mr. GILL. On or about December 14, 1971, Gordon Liddy left the White House to become counsel to the CRP, and then later to FCRP.

Mr. DOAR. Tab No. 81.

Mr. GILL. On December 29, 1971, a 15-count indictment of Daniel Ellsberg was filed alleging violations of the conspiracy statutes, and statutes prohibiting the unauthorized distribution of classified information and misappropriation of government property. No counts were included alleging the transmission of documents to a foreign country or to representatives of a foreign country because evidence was not developed to support such a charge.

Mr. DOAR. I would like to call attention to 81.2. Particularly I want to mention this to Congressman Butler, because David Nissen agreed voluntarily to be interviewed by us, and to give us his deposition in early March 1974. And the deposition was taken on or about the same time that we had the discussion about not taking any depositions until the rules with respect to deposition procedures were settled. This is the only deposition, or this is the only statement that was taken in this kind of a form by the inquiry staff. And I just wanted to explain that to Congressman Butler.

In effect it is an affidavit, sworn affidavit. He came willingly, but he asked to be subpoenaed to come from the West Coast.

That concludes that book.

The CHAIRMAN. We will recess until 2 o'clock.

Would you have this material picked up, Mr. Doar. And incidentally, there are two other items I think there that do not relate to the grand jury proceedings. Why don't you when you pick them up separate them, because I think they are just additions for the books.

Mr. DOAR. We will pick it all up and then we will reorganize it at the lunch hour.

[Whereupon at 12:30 p.m. the committee was recessed to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, in connection with the question about that document that had been delivered by the White House, Mr. St. Clair advised me at noon that after Mr. Jaworski's people had gone through the plumbers file. Sometime in February, the document with paragraph 2 eliminated had been called to his attention. It also had been referred to the FBI to determine whether they could determine how that occurred and whether it had occurred. Mr. St. Clair went to Mr. Ehrlichman's file, which is a file of Mr. Ehrlichman's papers located among the Presidential papers of the White House, and found the original document, without the paragraph 2 excised. On the 14th of February, 1974, he furnished that document to the Special Prosecutor.

We are still inquiring into what were the circumstances with respect to the sanitization of that file, but we have nothing more to report yet, although when we reach the March-April period this afternoon or in the morning, finishing up with this book, there is some further material with respect to these documents involved in which there is information about discussions and meetings between Young and Mr. Ehrlichman about these papers.

The CHAIRMAN. You may proceed.

Mr. DOAR. Paragraph 82.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Before proceeding, may I inquire, I have heard rumors among the press that there has been delivered to the chairman of the committee voluminous documents from the White House. I do not know whether this is true or not, but if it is, will they be distributed to members of the committee?

The CHAIRMAN. What voluminous documents are you referring to?

Mr. MARAZITI. I do not really know, but it indicated that it has to do with the position of the President in connection with the entire impeachment inquiry. This is what I hear. I do not know whether it is so. I ask if it is true or not. If it is not—

The CHAIRMAN. No such voluminous document has been delivered in my knowledge, or to my knowledge.

Mr. SEIBERLING. Would the gentleman yield?

I was asked if we had received a voluminous brief. This was the document that was referred to by one of the reporters.

Is that what the gentleman has in mind?

Mr. MARAZITI. Well, specifically, I understand that reference is made to delivery by counsel for the President to the chairman of the position of the President. It is supposed to have been delivered today. I am merely inquiring now whether it is true or not.

The CHAIRMAN. I had not intended to make reference to this incident, but since Mr. Maraziti has inquired, I am going to advise the committee. I had already advised Mr. St. Clair.

Mr. St. Clair, prior to our recessing the committee, had presented me with a brief—I did not know it was a brief. But he presented me with a brief and stated that this was his presentation of a response on behalf of the President to the committee relative to the Watergate question of the presentation. I, at that time, advised Mr. St. Clair that in accordance with the rules, that any presentation on the part of the President's counsel could be made only after the complete presentation and then, in accordance with the rules, orally or in writing, as the committee would determine.

Later, after looking further into the rules and just taking a glance at the written brief, which I just viewed from the outside, I advised Mr. Doar to return the briefs, together with the letter, to Mr. St. Clair because I felt this was not appropriate and not in accordance with the rules. Mr. St. Clair will be asked to respond to the presentation, orally or in writing as the committee will desire.

I also advised Mr. St. Clair that as long as I am chairman of the committee, I will run the committee in accordance with the rules of the committee. I am sure Mr. St. Clair knew what those rules are and I am sure Mr. St. Clair knew that when he presented a brief to the committee, the committee could not accept it at this time. The committee had made no determination, so I expected the matter to rest there.

Mr. MARAZITI. I thank you, Mr. Chairman, for responding to my inquiries. I wanted to determine exactly what the situation was. I concur with you in thinking that perhaps a brief and a presentation should be made at a particular time and the arguments be made at a particular time in accordance with the rules and regulations.

However, I do not know of any rules or regulations preventing the

presentation of any position at any time. It may exist, but I do not know it.

The CHAIRMAN. I refer you to the rules of procedure.

Mr. RAILSBACK. Mr. Chairman, could I just ask a question?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I take it that even though the committee has not authorized it—and I can understand exactly what you are saying, why you would not want it, perhaps, to become part of the official record, I take it that there is nothing to prevent Mr. St. Clair, if he so chose, from distributing it to everybody now.

The CHAIRMAN. I would object to Mr. St. Clair distributing to the committee what he considered to be a response on the part of the President when Mr. St. Clair is here because the committee has invited him and extended him the privilege, in accordance with the rules, to be here as an observer during the course of the presentation and then to respond in accordance with the rules. I believe that we have got to adhere to the rules.

Now, if any of you want to rewrite the rules, well, then, we are going to have to consider whether we want to rewrite the rules.

Mr. McCLODY. Mr. Chairman, I do not want to disagree with your decision and your ruling at this time and I think it is appropriate for this presentation to be made later. The only thing I would take exception to, and I do not have any knowledge of it, but I would not want to attribute to Mr. St. Clair the fact that he knew he was violating the rules in endeavoring to present this. I do not think there was anything deliberate on his part and I would not want to attribute any such action to him. I assume that this is a communication to him that at an appropriate time, we will be pleased to receive such oral or written presentation as the committee, as you say, Mr. Chairman, sees fit to invite him to present.

The CHAIRMAN. Well, I had not, as I stated before, intended to bring the subject up and I advised Mr. St. Clair privately. I must say that I have been accosted by various members of the press who inquired of me whether or not I had accepted the brief that had been presented to the committee by Mr. St. Clair. I feel constrained to say that this compromises the committee, compromises me, and therefore, I must state emphatically that I am going to adhere to the rules of the committee. We are going to write the rules and not Mr. St. Clair.

Mr. WALDIE. Mr. Chairman, would the release of the brief in any way violate the confidentiality of the committee? I presume the brief argues the evidence that has been presented in the case of confidentiality.

The CHAIRMAN. I want to say I have not read the brief, but as you know, the committee decided last week in a vote of the committee not to release any of the information that we had already had presented to us because it related to matters that were confidential. The committee has taken pains to insure that this inquiry be responsible and this is the way it is going to be conducted. I think for those reasons, it is inappropriate, but I think we need not say anymore. I have advised Mr. St. Clair and I think Mr. St. Clair understands what the rules are.

Mr. OWENS. Mr. Chairman.

Mr. LATTI. Let us just shut off debate. It is a nonpartisan inquiry.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab 82.

Mr. GILL. On December 30, 1971, Attorney General Mitchell received a letter from Ehrlichman renewing Ehrlichman's suggestion that the Attorney General consider a voluntary nonsuit of the Ellsberg prosecution.

Mr. DOAR. The reference to the renewal of the suggestion, we do not have any information to give to the committee about when the suggestion was first made or what were the arguments contained in Mr. Ehrlichman's initial suggestion.

Tab No.—Mr. Jenner said that I should call your attention to 82.1, that in the letter from Mr. Ehrlichman to the Attorney General, he says, "May I renew my suggestion that you very seriously consider the voluntary nonsuit route?" Tab 83.

Mr. GILL. On February 11, 1972, at the direction of Haldeman and Attorney General John Mitchell, Gordon Liddy and Howard Hunt met with Donald Segretti in Miami to review Segretti's activities. This meeting was in response to a memorandum sent to Haldeman and Mitchell entitled "Matter of potential embarrassment" prepared by Jeb Magruder, which stated that Segretti should be under Liddy's control. This memorandum was destroyed by Gordon Strachan on June 20, 1972. Hunt has testified that he and Liddy recommended that Segretti's operation be terminated, but that their recommendation was overruled.

Mr. DOAR. Part of the proof on this paragraph and the pertinence of it is the memorandum from Dwight Chapin dated November 5 at 83.4, one part of it, we will come to that later on. I would just like the committee to note 83.4 and we will come to that later. Paragraph 84.

Mr. GILL. On May 27 and June 17, 1972, five men under the supervision of Liddy and Hunt entered the offices of the DNC at the Watergate Office Building for the purpose of gathering political intelligence and effecting electronic surveillance. Two of these five, Bernard Barker and Eugenio Martinez, had participated with Liddy and Hunt in the break-in at the offices of Daniel Ellsberg's psychiatrist.

Mr. DOAR. Paragraph 85.

Mr. GILL. On or about June 8, 1972, in the course of pretrial proceedings in the *Ellsberg* case, the Government, in response to an order of the court, filed an affidavit stating that there had been no electronic surveillance of conversations of Daniel Ellsberg. This statement was repeated in affidavits filed on December 13, 1972, and February 23, 1973.

Mr. DOAR. To refresh the committee's recollection, the fact is that Daniel Ellsberg was overheard in connection with conversations that he had held on the telephone of Morton Halperin, his residence telephone. Morton Halperin's telephone was one of the telephones that was tapped under the program that we have presented to you in the last several days.

The procedure of the Bureau with respect to electronic surveillance is to keep an index of not only all calls that are made on the phone that is tapped, but also all conversations of individuals that are overheard on the particular telephone. So that there is a crossindex so that in the event there is litigation, the Justice Department can go to the indexes

and determine whether a particular person has been the subject of a wiretap or if one of his conversations has been incidentally overheard.

The committee will also remember that in July 1971, the Justice Department's Internal Security Division made an inquiry about this matter and was informed that there were no records of such, of over-hearings of Daniel Ellsberg.

The applications here reflect repeated and vigorous attempts by the defendants in the case of *United States v. Russo* to try to find out if there were wiretaps on Daniel Ellsberg and to keep renewing them so that if their wiretaps had occurred subsequent to the first application, that there was a new application to the court pending. Up through February 1973, the response of the Justice Department was that there were no records in the file and at that time, of course, there were no records in the Justice Department file.

Mr. WIGGINS. Mr. Chairman, may I ask a question of counsel?

The CHAIRMAN. Mr. Wiggins?

Mr. WIGGINS. Counsel, my memory of fourth amendment law is somewhat hazy, but I want to know if there is a difference between conversations of the person whose premises have been violated by a tapping and one simply overheard as a result of a tap on someone else's phone? As I recollect, there was no tap on Dr. Ellsberg, but the possibility was that he was overheard on a Halperin tap. Is that correct?

Mr. DOAR. That is correct.

Mr. WIGGINS. Does that violate Ellsberg's rights?

Mr. DOAR. Yes; I believe it does.

Mr. WIGGINS. Is there agreement on that?

Mr. JENNER. There is. That is so under the law.

Mr. SEIBERLING. Mr. Chairman, could I inquire?

The CHAIRMAN. Has he completed?

Mr. WIGGINS. Yes; he has answered my question.

Mr. DOAR. I think, Mr. Wiggins, that with respect to the production of the material, it has to be produced by the Justice Department to see if it taints any of the material. Whether or not Mr. Ellsberg—I believe Mr. Ellsberg would be free to raise the fourth amendment claim with respect to material that was overheard on the conversation at Dr. Halperin's home, but I am not just exactly certain of that.

Mr. WIGGINS. I have a view, but I am not positive, either.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I wonder if I might ask Mr. Doar and Mr. Jenner whether these affidavits are technically correct in terms of the terminology that they use? And that overhearing is not electronic surveillance in the technical sense? Or is this simply a misstatement of fact in these affidavits? Each one of them says there has been no electronic surveillance of conversations of Daniel Ellsberg. I suppose that from a narrow point of view, that could be correct in that they were conducting surveillance of Halperin. But as has been pointed out, there was electronic surveillance of the conversations; there was not electronic surveillance of the individual. But there was of his conversation. Is that correct?

Mr. DOAR. That is correct.

Mr. SEIBERLING. So that these affidavits are technically inaccurate as well as not being the whole truth?

Mr. DANIELSON. Would the gentleman yield?

Mr. SEIBERLING. I yield.

Mr. DANIELSON. I respectfully call your attention to the language "nor has there been any electronic surveillance of conversations occurring on their premises."

Mr. SEIBERLING. Well, that is possible.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. May I inquire of counsel, in this tab, the last affidavit states that—

No such electronic surveillance has been conducted at any of the places described in said orders and communications of any of the attorneys or consultants listed in said orders have been overheard, except as heretofore has been disclosed to the court in camera, pursuant to the court's order of July 7, 1972.

Now, those could be conversations with Daniel Ellsberg if he called attorneys or attorneys called him or he called consultants or consultants called him and they were referred to in camera, or does this exception not include any such conversation.

Mr. SEIBERLING. As I recall, it involved the attorneys.

Mr. GILL. It does not include any conversations with Ellsberg. They were surveillances of other places on which two coincidences, the attorneys happened to call up those places on business unrelated to the trial.

Mr. McCLORY. You are familiar with the electronic surveillance that was revealed in camera?

Mr. GILL. Yes; and it has nothing to do with Ellsberg.

Mr. EDWARDS. Mr. Doar, the records of the Department of Justice are just incomplete?

Mr. DOAR. The records were incomplete, yes.

Mr. EDWARDS. That is correct. They were incomplete. At whose instructions were they incomplete? By whose instructions were the records of these wiretaps of Daniel Ellsberg not put into the appropriate files of the Department of Justice?

Mr. DOAR. They were at the instructions of Mr. Hoover, who was requested to do it that way by General Haig, who said that the request came from the highest authority.

Mr. EDWARDS. Did he say why?

Mr. DOAR. He did not say why.

Mr. EDWARDS. Do we have any evidence why they were not put into the regular recordkeeping machinery of the Department of Justice?

Mr. DOAR. My recollection of that memo was that this was a very sensitive matter and that General Haig would prefer to see that no records be kept whatsoever.

Mr. GILL. That is correct, and the only copy of the records has been delivered by Mr. Mardian to Mr. Ehrlichman as noted this morning.

Mr. EDWARDS. Can you give us the paragraph number?

Mr. GILL. I do not have it with me.

Mr. EDWARDS. If we could get the time these inquiries were made, where actually were these records?

Mr. DOAR. The records were in Mr. Ehrlichman's safe. In July

1971. Mr. Sullivan had approached Mr. Mardian and had been asked about these records and it had been suggested by Mr. Sullivan that there was a risk that Mr. Hoover might use these records against the President and Mr. Mardian went to see the President and the President directed him to get Mr. Sullivan to deliver the records to him. Mr. Mardian took the records to the White House and delivered them to someone in the Oval Office, and he declined to say to whom he delivered them.

Then Mr. Ehrlichman was given those records and he put them in his safe, but he declined to say who gave them to him.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Do we have somewhere in our documentation this memorandum to which you referred which indicated that General Haig had requested Mr. Hoover to, I guess turn them over to him, and that General Haig's orders came from the highest authority?

Mr. DOAR. Yes; we do.

Mr. GILL. That is in the first book last week, Mr. Danielson. On Thursday, it is in that book.

Mr. DANIELSON. My apologies.

Mr. DOAR. We will cite that for you.

Mr. FLOWERS. Could I ask one question, Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. What was General Haig's capacity at the time that he is alleged to have given this direction? He was Mr. Kissinger's deputy, is that correct?

Mr. DOAR. He was Mr. Kissinger's deputy.

Mr. FLOWERS. Maybe the highest authority to him was Mr. Kissinger.

Mr. DOAR. If the committee will remember, at the—the President had stated that he directed that these wiretaps be instituted. He stated that he directed it on the basis of access to very confidential information, that the criteria were access, information that the Government had about these particular people, and information that was developed in the course of the investigation. Following that authorization of the program, then the program was implemented by a visit by General Haig to Mr. Sullivan naming the people that were to be tapped under the program. It was at that time that Mr. Haig, General Haig, requested that the Bureau not keep these files in their ordinary indices and that they be kept separate and apart and no copies be made of the records and no reports be sent to anyone except to the White House-designated personnel.

Ms. HOLTZMAN. Mr. Doar?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Was it the general practice of the Assistant Attorney General in charge of the Internal Security Division to respond to request in criminal trials for electronic surveillance records?

Mr. DOAR. Yes; I am sure it was.

Ms. HOLTZMAN. So was not Mr. Mardian head of the Internal Security Division of the Justice Department for a while?

Mr. DOAR. He was.

Ms. HOLTZMAN. So when he turned those records over to the White House, was he not aware at that time that those records could not be available in court proceedings and that there would have to be a problem, or there might be a problem of misleading the court in future potential criminal trials with respect to these wiretaps?

Mr. DOAR. I do not believe there is any evidence that Mr. Mardian looked at the file, except he did, when he went over to the White House, he did go over the reports. The committee will remember there were 50 some reports sent over to the White House on these wiretaps and the President had directed Mr. Mardian to be certain that the authorized person still had the report that had been sent to him so that Mr. Mardian went over and sat down with, I believe his testimony was or his 302 was, with Secretary Kissinger and Mr. Haig and went over the list of reports and checked to see that they had every one of the reports.

Now, obviously, Mr. Mardian could have, at that time, realized the names of the people, but whether he was familiar enough with the case to know whether the defendants were asking—that would just be the names of the persons who were tapped. They did not go through the names of the people that were overheard.

Ms. HOLTZMAN. The question I am getting to is whether, through Mr. Mardian, the President was authorizing the removal of these documents which would affect other criminal prosecutions. I am not talking about Mr. Ellsberg, but presumably—

The CHAIRMAN. I do not think counsel can answer that, Ms. Holtzman.

Ms. HOLTZMAN. Well, I just think this raises that question.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 86.

Mr. GILL. On June 20 or 21, 1972, Fred LaRue, special assistant to CRP Campaign Director John Mitchell, and Robert Mardian, an official of CRP acting as its counsel, met in LaRue's apartment with Gordon Liddy. Liddy told LaRue and Mardian that certain persons involved in the Watergate break-in previously had been involved in operations of the White House "plumbers unit," including the entry into the office of Daniel Ellsberg's psychiatrist. Liddy told Mardian and LaRue that commitments for bail money, maintenance, and legal services had been made to those arrested in connection with the DNC break-in and that Hunt felt it was CRP's obligation to provide bail money and to get his men out of jail.

Mr. DOAR. Tab No. 87.

Mr. GILL. On or about June 21, 1972, Mardian and LaRue met with John Mitchell and told him of their meeting with Liddy, including Liddy's statements about the break-in into the office of Daniel Ellsberg's psychiatrist. Mitchell was also advised of Liddy's request for bail money and of Liddy's statement that he got his approval in the White House. Mitchell instructed Mardian to tell Liddy that bail money would not be forthcoming. Mitchell has testified that he refrained from advising the President of what he had learned because he did not think it appropriate for the President to have that type of knowledge, and that he believed that knowledge would cause the President to take action detrimental to the campaign and that the best thing to do was just to keep the lid on through the election.

Mr. DOAR. Tab No. 88.

Mr. GILL. On June 23, 1972, H. R. Haldeman met with the President. The President directed Haldeman to meet with CIA Director Richard Helms, Deputy CIA Director Vernon Walters and John Ehrlichman. The President directed Haldeman to discuss White House concern regarding possible disclosure of covert CIA operations and operations of the White House special investigations unit, the Plumbers, not represented to Watergate, that had been undertaken previously by some of the Watergate principals.

Mr. DOAR. Tab 89.

Mr. GILL. On or before June 25, 1972, immediately after the FBI had contacted Donald Segretti as part of the Watergate investigation. John Dean met with Segretti in the EOB to advise Segretti on how to deal with his impending FBI interview. In this meeting, arranged by Dwight Chapin and Gordon Strachan, Dean told Segretti not to reveal his relationship with the Chapin, Strachan or Herbert Kalmbach to the FBI, if possible, and during the subsequent FBI interviews, Segretti withheld this information. A copy of the interview summary FBI 302 form was given to Dean by the FBI. In July 1972, Chapin instructed Segretti to destroy his records.

Mr. DOAR. Tab No. 90.

Mr. GILL. On or about June 27, 1972, John Dean and Fred Fielding, his assistant, delivered to FBI agents a portion of the materials from Howard Hunt's safe. The materials given to the FBI agents included top-secret diplomatic dispatches relating to Vietnam. The portion withheld from the FBI agents included fabricated diplomatic cables purporting to show the involvement of the Kennedy administration in the fall of the Diem regime in Vietnam, memorandums concerning the Plumbers unit, a file relating to an investigation Hunt had conducted for Charles Colson at Chappaquiddick, and two notebooks and a popup address book.

Mr. DOAR. Tab No. 91.

Mr. GILL. On or about June 28, 1972, John Dean was informed that the FBI was attempting to interview Kathleen Chenow, who was the secretary of David Young and Egil Krogh when they were acting as part of the White House special investigations unit. Dean has testified that he informed John Ehrlichman of problems connected with Chenow's interview and Ehrlichman agreed that before her FBI interview, Chenow should be briefed to disclose the activities of Howard Hunt and Gordon Liddy while at the White House. On June 28, 1972, Dean telephoned Acting FBI Director Gray and requested that Chenow's interview be temporarily held up for reasons of national security. Gray agreed to the request.

Mr. WIGGINS. May I ask a quick question?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Since these tabs and the next one are plowing ground that we have been over before, should we not be alerted to something that was not covered in previous testimony?

Mr. DOAR. No, if there were, I would be calling it to your attention.

Mr. WIGGINS. Then what is the reason for this?

Mr. DOAR. To tie it into the matter of the Plumbers inquiry.

Mr. WIGGINS. I see.

Mr. DOAR. We put it in for that reason. We debated back and forth whether or not to refer you or cross-reference, but because of the tediousness of asking you to pick it out and go to another book, we put it in and we just read through them fast. There are four or five of these, Congressman.

Mr. WIGGINS. All right.

Mr. DOAR. If there were anything particular, I would call it to your attention. Tab 92.

Mr. GILL. On June 2, 1972, Patrick Gray met with John Ehrlichman and John Dean. At this meeting, Gray was given two folders containing documents which he was told had been retrieved from Howard Hunt's safe and had not been delivered to FBI agents when the remainder of the contents of the safe was delivered on June 27, 1972. Gray was told that these documents were politically sensitive, were unrelated to Watergate, and should never be made public. Gray destroyed these documents in December 1972. Dean did not deliver to Gray the two notebooks and popup address book that had been found in Hunt's safe; Dean has related they discovered these items in a file folder in his office in late January 1973, at which time he shredded the notebooks and discarded the address book.

Mr. DOAR. Tab No. 93.

Mr. Gill.

Mr. GILL. In the summer of 1972, after Segretti had terminated his activities, Chapin met with Segretti in California. Segretti has testified Chapin told him to keep several thousand dollars of advanced expense money as a bonus. They also discussed the possibility of Chapin's finding Segretti a job.

Mr. DOAR. Tab No. 94.

Mr. GILL. In August 1972, Chapin arranged for Dean to meet with Segretti prior to his appearance before the Watergate grand jury. Dean advised Segretti again to withhold the names of Chapin, Strachan, and Kalmbach before the grand jury, if possible, but told him not to lie. On the basis of a call from Dean, Assistant Attorney General Henry Petersen instructed Assistant U.S. Attorney Earl Silbert to confine his questioning of Segretti to Watergate and Segretti's contacts with Hunt and not to ask him about his contacts with Kalmbach.

Mr. DOAR. In the telephone records of Donald Segretti, there were a number of telephone calls to E. Howard Hunt. It was this that the grand jury in the District of Columbia investigating the Watergate matter were interested in inquiring about from Mr. Segretti. The relationship between Mr. Chapin, Mr. Strachan, Mr. Kalmbach, and also Mr. Haldeman with Mr. Segretti, was not a matter that the grand jury had any information about. Dean was saying to Mr. Petersen, that the information or the inquiry should be limited to Segretti's knowledge of Watergate or his contacts with Hunt. Tab No. 95.

Mr. GILL. On August 28, 1972, Egil Krogh appeared and testified falsely before the Watergate grand jury that he had no knowledge that Howard Hunt had traveled any place other than Texas while he was working on the declassification of the Pentagon Papers.

He also testified falsely that he knew of no trips to California for the White House by Gordon Liddy.

Mr. DOAR. This morning, Congressman Wiggins indicated that Mr. Krogh's full statement, he would like to have that made a part of the record. We have that here for you. You might note in your book it could relate to a number of paragraphs, but you could make a note on paragraph 95 to see the statement of Egil Krogh which he made at the time of his sentencing. We will furnish that to you if it is not already at your desk. The materials that Egil Krogh testified to is found in 95.1 at the second page. He was asked:

Do you have any knowledge of any travel that Mr. Hunt made in connection with the declassification of the Pentagon Papers" or the narcotics program that he was working with you on?

A. I am aware of the trip to Texas that he took, but other travel, no.

Q. During any other period while Mr. Hunt was working at the White House, which would have been through, I believe, the end of March 1972, are you aware of any travel that he made for the White House?

A. No, I am not.

Q. Are you aware of any travel that Mr. Hunt made, whether he made it for himself personally or for any other person?

A. No, I am not.

Then on the next page, he was asked—this is at page 3:

Q. Now, what travel did Mr. Liddy do while he was at the White House that you are aware of?

A. He made a trip to California for me on some customs matters, customs issues on narcotics, which was more of an in-house watchdog type of trip to determine the effectiveness of the program out there.

He had been involved in developing operation intercept in 1969, which pretty much was located out of the Los Angeles area, Terminal Island.

And this was an outdated, so to speak, on how things were going in Los Angeles area.

Q. Now, he was supposed to contact customs officials in the Los Angeles—

A. That was my understanding, but he did not give me an itinerary of—

Q. Was there a report filed by him with you of the trip?

A. No, just an oral report.

Q. Oral?

A. Right.

Q. Now, do you know of any other travel that Mr. Liddy might have performed—

A. No.

Q. For the White House or for anyone else or for himself?

A. No.

Q. Other than this one trip to California, can you think of any reason why he would have had to travel to California for the White House?

A. No.

Tab 96.

Mr. GILL. After an October 10, 1972, newspaper story disclosed Segretti's activities, Segretti met with Dean at the EOB. On October 11, according to Dean, at Ehrlichman's suggestion, he told Segretti to go underground until after the election. On October 13, 1972, Chapin, Ehrlichman, H. R. Haldeman, Ronald Ziegler, and Richard Moore met at the White House. They discussed an impending Post story which stated that Chapin was Segretti's White House contact in a sabotage operation against the Democrats. Chapin issued a statement which indicated that he had known Segretti in college, but labeled the Post story as hearsay and inaccurate.

Mr. DOAR. That completes this book, Mr. Chairman.

The CHAIRMAN. Mr. Doar, might I inquire how many more paragraphs there are to the domestic surveillance?

Mr. DOAR. There is a total of 33 more paragraphs.

The CHAIRMAN. There is another book besides this?

Mr. DOAR. That is right. I plan to go through this book today.

The CHAIRMAN. OK. Then we have one book left on this and then we have a book on the IRS tomorrow.

Mr. DOAR. We have the matter of the September 15 tape in connection with the IRS tomorrow, which will take a little more time than the ordinary book.

The CHAIRMAN. Are you going to be distributing those other briefs on impoundment?

Mr. DOAR. A brief on impoundment will be distributed to the members at 5 o'clock tonight. The brief on Cambodia, with the committee's permission, I would like to deliver it the first thing in the morning, because the typists need to make another run of the corrected brief and it will have to be done after supper. But it will be there first thing in the morning.

The CHAIRMAN. All right. Will you proceed, Mr. Doar?

Mr. DOAR. Could I add just one more thing about that, as long as you ask?

The CHAIRMAN. Yes.

Mr. DOAR. On the brief on impoundment, the brief does not draw any conclusions. It just attempts to detail as factually as we can all of the information that we have collected about the impoundment cases, and then indicates what matters are relevant for or against the question that is involved in this inquiry. It gives the committee a great deal of factual information and a great deal of historical information.

The CHAIRMAN. And that will be a subject for discussion Thursday?

Mr. DOAR. That will be a subject for discussion Thursday.

The information on impoundment is, my analysis is that with respect to the factual inquiry, it is more complete than the information on Cambodia, because there has just been some material that we have not yet been able to secure from other committees of Congress.

Mr. DENNIS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I understand that the President's counsel submitted a brief here and that you ruled while I was otherwise occupied that the members of the committee were not entitled to see this brief on the Watergate at this time. Now, evidently, we are going to have briefs on a number of other subjects. I do not know whether President's counsel will have briefs on them, too, or not, but in the event that he does, is the same ruling going to apply? Are we to have only one brief and nothing from the President of the United States if it is offered, or just what is the procedure going to be?

Mr. CHAIRMAN. Mr. Dennis, I have already stated, and I suppose it was in your absence——

Mr. DENNIS. It was.

The CHAIRMAN. The Chair will do everything possible to comply with the rules of procedure that we have laid down and that is going to be my ruling.

Mr. DENNIS. Well, but if I may inquire further, Mr. Chairman, I frankly do not understand in what respect it can possibly violate the rules we have laid down for us to read a brief. Now, I understand the matter of leaking things outside the committee, which has been done rather freely, I may say, but I just do not see where our rules are violated if I want to study a legal brief or any other member of this committee. And I would think members would want to study them. I know I would like to.

Mr. SEIBERLING. Regular order.

The CHAIRMAN. Mr. Dennis, let me just state that you are free to solicit whatever information you want, but the committee will, so long as I am presiding over it, comply with the rules of procedure and the rules are that the initial presentation will be made first and then the President's counsel will be permitted to respond orally or in writing as the committee will determine. I refer you to that rule and I think we had better get on, since I have already restated this.

Mr. DENNIS. Well, I do not read the rule that way, Mr. Chairman. If you do, of course.

The CHAIRMAN. If you will listen to the Chair, then you will understand how the chairman read the rule, but that is the way the rule is and that is the way I have stated it.

Mr. DENNIS. I thank the chairman for his courteous explanation of his version of the rule.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. No. 97.

Mr. GILL. In October 1972, according to Haldeman, the President read newspaper stories linking Segretti and Kalmbach and asked Haldeman about them. Haldeman has testified that he had specific information to answer the President's questions about Segretti.

Mr. DOAR. Tab 98.

Mr. GILL. After November 5, 1972, Ehrlichman received a detailed factual chronology prepared by Chapin about White House involvement with Segretti. In preparing the chronology, Chapin used blanks instead of the names of Haldeman and Mitchell. Chapin has testified he did this out of a deep sense of loyalty to Haldeman.

Mr. DOAR. Tab 98.1 is the Dwight Chapin memo that was introduced in evidence at the Chapin trial this year. This document had been handed by Mr. Chapin early in November to Mr. Dean at the time he was leaving—in early November, when he brought over a whole packet of materials that related to the matter. He identified this as Mr. Chapin's handwriting.

If you then turn to page 426, the memo is dated November 5, and it is entitled "chronology of activity." At paragraph 3, it is written as follows:

Gordon Strachan brought the subject to the attention of blank and Kalmbach at a White House meeting. It was approved for Segretti to be hired.

Then on page 428, at the top of the page, the third line:

Strachan checked two people—blank and blank—and then Don was advised to report to Liddy. That is how his phone number got in Liddy's book and how his existence was later discovered by the FBI.

Mr. Chapin has testified that the two people, blank and blank, they

are Mitchell and Haldeman. The single blank earlier referred to is Mr. Haldeman. That reference is at 98.2, in Mr. Chapin's testimony at page 495 in the middle of the page: "What name was to go in there?"

"Bob Haldeman's name."

And on page 496, the second reference with regard to blank and blank was Haldeman and Mitchell. No. 99.

Mr. GILL. On November 10, 1972, Dean met with Segretti in California and taped the conversation, during which Segretti explained his activities, some of which were criminal, and his involvement with Chapin. Dean has testified that at Ehrlichman's direction, he played the tape recording for Haldeman and Ehrlichman at Key Biscayne on November 12, 1972, on November 15, 1972, at Camp David. Haldeman and Ehrlichman told Dean that the President had decided that Chapin had to leave the White House.

Mr. DOAR. Paragraph 100.

Mr. GILL. On December 18, 1972, Ronald Ziegler, the President's press secretary, announced that Chapin would continue during the second term as Deputy Assistant to the President. In January 1973, Ziegler announced that Chapin would leave the administration, but denied that his departure was a rule of his relationship with Segretti.

Chapin has testified that he left the White House because of the publicity about his connection with Segretti; that he was interested in protecting the President because the President did not know anything about Segretti's activities; that he was also interested in protecting Haldeman.

Mr. DOAR. Dwight Chapin's testimony is at paragraph 100.3. Tab 101.

Mr. GILL. On January 8, 1973, former CIA Deputy Director Cushman sent a memorandum to John Ehrlichman identifying as the person who requested CIA assistance for E. Howard Hunt in 1971 one of the following: Ehrlichman, Charles Colson, or John Dean.

On January 10, 1973, after discussions with Ehrlichman and Dean, Cushman changed the memorandum to state that he did not recall the identity of the White House person who requested assistance for Hunt.

Mr. DOAR. Tabs 101, 102, and 103 are cross reference tabs. Tab 102.

Mr. GILL. Early in 1973, John Dean met with Assistant Attorney General Petersen. Petersen showed Dean documents delivered by the CIA to the Department of Justice at an October 24, 1972, meeting, including copies of the photographs connecting E. Howard Hunt and Gordon Liddy with Dr. Fielding's office. On a second occasion prior to February 9, 1973, Dean met with Petersen and discussed what the Department of Justice would do if requested by the CIA to return materials. Petersen told him that a notation that the materials had been sent back to the CIA would have to be made in the Department's files.

Mr. DOAR. Tab No. 103.

Mr. GILL. On February 9, 1973, Dean called CIA Director James Schlesinger. Dean suggested that the CIA request the Department of Justice to return a package of materials that had been sent to the Department of Justice in connection with the Watergate investigation. Deputy CIA Director Walters contacted Dean on February 21, 1973, and refused Dean's request.

Mr. DOAR. Tab No. 104.

Mr. GILL. On or about February 22 or 23, Dean has testified that Time magazine notified the White House that it was going to print a story that the White House had undertaken wiretaps of newsmen and White House staff members. Dean made inquiries of Assistant FBI Director Mark Felt, former Attorney General Mitchell, and former Assistant FBI Director William Sullivan respecting this matter. According to Dean, he called John Ehrlichman. Ehrlichman admitted that he had the logs and files of these wiretaps in his safe, but directed Dean to have Presidential Press Secretary Ronald Ziegler flatly deny the story. According to Dean, he called Ziegler and so advised him. Time quoted a White House spokesman as stating that no one at the White House asked for or received any such taps.

Mr. DOAR. John Dean's testimony before the Senate select committee is at 104.1. His testimony of his conversations with Mr. Ehrlichman is at page 1921, at the second paragraph, in which he said he called Mr. Ehrlichman and told him of the forthcoming story in Time:

I told him of my conversation with Felt, Sullivan, and Mitchell. I also told him I knew he had the logs because Mr. Mardian had told me. This time he admitted they were in his safe. I asked him how Mr. Ziegler should handle it. He said Mr. Ziegler should flatly deny it—period.

Tab No. 105.

Mr. GILL. On February 28, 1973, the President met with John Dean. They discussed the February 26 Time magazine story about the 1969 to 1971 wiretaps. Dean also informed the President of his conversations with William Sullivan respecting conduct by prior administrations with relation to the FBI. Dean said the White House was stonewalling the Time magazine story totally, and the President said, oh, absolutely. The President stated that the tapping was a very unproductive thing and had never been useful in any operation that the President ever conducted.

The CHAIRMAN. We will recess until this rollcall is over. This is a vote on the rule.

We will be back in 15 minutes.

[Recess.]

The CHAIRMAN. Mr. Doar, will you proceed?

Mr. DOAR. The transcript that we distributed to the committee with the grand jury material, which we would like to pick up along with the grand jury material at the close of the presentation, sets forth about 15 or 13 pages of the conversation on February 28 between the President and John Dean dealing with the wiretaps. I do not intend to go over this transcript with the committee now, but I would like to call the committee members to several points about it, if I could.

The CHAIRMAN. Which one are you referring to?

Mr. DOAR. I am referring to the February 28 transcript, from 9:12 to 10:23 a.m. I am talking about the transcript now, not the material that was just distributed. There were a couple of things about the transcript.

In the transcript, as you read through it, the President and John Dean have a rather elliptical conversation about these wiretaps. It seems that on more than one occasion during the conversation, there is some confusion about which wiretaps the President is talking about or Mr. Dean is talking about.

There is also some discussion there with respect to conversations that Dean had with Mr. Sullivan with respect to conduct by prior administrations with relation to the FBI and with respect to wiretaps. One member of the committee asked whether or not we had interviewed Mr. Sullivan and whether we had that statement that Mr. Sullivan made with respect to the activity of prior administrations, and we do have that over at the inquiry staff.

The third thing is that there was in the middle of this material, there was a 1-minute and 12-second deletion. If you look at page 44, you will see that. This deletion does relate to wiretapping. It was deleted on the judgment and decision of the chairman and the ranking minority member because it involved a national security matter. But again, we have that material at the committee.

Just above that is Dean's comment to the President with respect to the leak coming from the current Time magazine story, "We are stonewalling that totally." Now, this is the leak to the effect that there were 17 wiretaps that had occurred in 1969 under this special program of the President's, and the President replied, "Oh, absolutely." Tab No. 106.

Mr. GILL. On March 1, 1973, Acting FBI Director Gray testified publicly before the Senate Judiciary Committee that he had checked the records and indexes of the FBI and had found no record that newsmen and White House officials had been wiretapped. By a written report dated February 28, 1973, Assistant FBI Director E. S. Miller had furnished to Assistant FBI Director Mark Felt information respecting the wiretaps referred to by Time magazine.

Mr. DOAR. The memorandum of February 26, 1973, is one memorandum that we have not yet called to the committee's attention. That is at 106.2 and it is an attachment to the memorandum dated May 12, 1973. If you go to the very back of the attachment, there is a memorandum of October 20, 1971. This relates to a report by E. S. Miller to Alex Rosen, who was Director of the Criminal Division of the Bureau, with respect to the transfer of these materials to Mr. Mardian.

Then the next memorandum is dated February 26, 1973, and that is the memorandum that is referred to in the statement of information. Fully, both the October 20 memorandum and the February 28 memorandum referred to these wiretaps. Tab No. 107.

Mr. GILL. On February 28, March 8, 13, and 14, 1973, the President discussed the extent of Segretti's White House involvement with Dean. Between March 18 and March 22, 1973, Richard Moore prepared a factually accurate report about Segretti's relationship with Chapin and Kalmbach, and a copy was forwarded to Ehrlichman, but it was not released to the public.

Mr. DOAR. Tab No. 108.

Mr. GILL. On March 13, 1973, the President met with John Dean. The President stated that Patrick Gray should not be FBI Director and mentioned another possible appointee to that position. Dean also reported to the President on the information that Sullivan had about the 1969-71 wiretaps.

Mr. DOAR. Tab 109.

Mr. GILL. On March 20, 1973, Krogh has testified that he met with Dean in Dean's EOB office and they discussed Hunt's threat to tell all

the seamy things that he had done for Ehrlichman unless he was paid more than \$100,000. Following this meeting, Krogh had a telephone conversation during which Ehrlichman said that Hunt was asking for a great deal of money and if the money was not paid, Hunt might blow the lid off and tell all he knew. During the same period, Ehrlichman reviewed with Young what Hunt might say in the light of the blackmail attempt.

Mr. DOAR. This testimony of Egil Krogh is part of his testimony before the grand jury which I distributed to the members of the committee this morning. This is the testimony on January 29, 1974, on pages 3 through 7, in which, at page 3, Mr. Krogh testifies of a meeting that he had with John Dean on the 20th of March in the midafternoon in the Executive Office Building; and on page 4, where Mr. Dean told him that Mr. Hunt had asked for a great deal of money. It was over \$100,000.

I am on page 4 of Emil Krogh's testimony, line 6. This is Egil Krogh's testimony on Tuesday, January 29, pardon me.

Mr. JENNER. 1974.

Mr. DOAR. At any rate, Dean then relates the fact that he told Krogh that the President was being badly served, that the President did not know what was going on—that is at line 12 of page 4. Krogh testifies as he goes on that Mr. Dean was extremely unhappy, seemed to be very agitated.

Then if you go to page 5 at the bottom, the second to last line from the bottom, "Following your meeting with Mr. Dean, did you have a telephone conversation with Mr. Ehrlichman," and he said, "Yes, I did. I returned to the Department of Transportation. I am not sure of the precise time. It must have been about 4:30, 5 o'clock that afternoon."

Ehrlichman had called him. "He told me, when we made contact on the telephone, that Mr. Hunt had been asking for a great deal of money."

Then he is asked further down the page at line 15, "I asked what else did Mr. Ehrlichman say?"

He answers, "I told him—I asked him what condition Mr. Hunt was in and he said he did not know; that John Mitchell was responsible for the care and feeding of Howard Hunt."

Mr. WIGGINS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Wiggins?

Mr. WIGGINS. Counsel, this testimony relates to the final payment of money to Hunt, which all of the members agree is a very important aspect of this case and it is therefore important to me that events be tied down precisely and there is a great ambiguity in the record with respect to the date that O'Brien visited the office of Bittman and had his conversation with Hunt, which was the genesis of this conversation we have here before us now. It is either the 16th or the 19th and it is not clear—in fact, it goes both ways on that. If counsel could clarify that at some later time for me, I regard it to be of some importance.

Mr. DOAR. All right. I know the matter you are speaking about and I know where the ambiguity is.

Mr. WIGGINS. In this connection, in the Presidential submission,

Dean, in talking to the President, refers to the date as on a Friday. That is the 16th.

Mr. DOAR. Right.

Mr. WIGGINS. That is just a further ambiguity, frankly, because it goes both ways.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. On page 5 of the transcript that you have shown us, it seems to me that while not directly related to this—maybe not directly related to this item, but maybe directly related—I do not think you read it, but it seems most significant to me. It says:

Now, when Mr. Dean said, in substance, that the President did not know what was going on, did you interpret—did that statement lend itself to an interpretation that the President did not understand what the significance was of what was going on?

A. Yes; it would lend itself to that interpretation.

Mr. SEIBERLING. Mr. Chairman, I do not know whether I am the only one, but some of these pages are askew and part of the lines are missing and page numbers are missing. I think that when we give these back to the staff, they had better check them out and make sure that all of the pages, all the words, are there. Some of them have the words cut off.

Mr. DOAR. Then on the next page, Mr. Krogh makes an arrangement—this is on page 7, and he asks for a meeting with Mr. Ehrlichman. They agreed that they would meet the next afternoon—that is on the 21st. Tab No. 110.

Mr. SARBANES. Mr. Chairman, could I clarify one thing, because I did not have this grand jury statement and did not realize it until now.

How many of them should we have since they are going to be returned?

Mr. GILL. There are five. There are three Young grand jury statements and two by Krogh, so there are nine documents in that envelope, plus the Beecher article—I mean nine returnable documents.

Mr. DOAR. Tab No. 110.

Mr. GILL. On the afternoon of March 21, 1973, the President met with H. R. Haldeman, John Ehrlichman, and John Dean. Ehrlichman stated that the disclosure of Hunt's activities regarding the break-in at Ellsberg's psychiatrist's office raised search and seizure problems which could result in a mistrial in the Daniel Ellsberg prosecution. Krogh has testified that on March 21, 1973, Ehrlichman said that perhaps Krogh and Young should tell the Department of Justice about the events of 1971 under a grant of limited immunity, but Ehrlichman told Krogh not to do anything about this possibility until the next day when Mitchell would arrive in Washington and it could be learned how Hunt's demand would be or had been handled.

Mr. DOAR. Mr. Krogh relates the substance of this paragraph in his grand jury testimony from pages 7 to 10, on Tuesday, January 29, 1974. Then we refer in the next paragraph to the conversation on the following day. Tab 111.

Mr. McCLORY. Mr. Chairman, I think a page is missing.

Mr. DOAR. Congressman McClory, I think it is just that this was a bad Xerox.

Mr. McCLODY. There are pages 6, 7, and 9.

The CHAIRMAN. Yes; mine is missing, too.

Mr. JENNER. Mr. Chairman, when we get these back tonight, we will examine every one of them and be sure that if there are any missing pages, they are supplied.

The CHAIRMAN. Yes; would you make sure, because when you turn them over to the members of the committee, into their possession finally, I think we should have the complete set.

Mr. JENNER. Mr. Chairman, these are assembled on a collating machine and occasionally the collating machine will reject one page. And we get a whole stack of these and we do not always know that when it happens in just one.

Mr. McCLODY. In turning mine back, I just want to indicate to you that I never got a page 8, so you are not going to get a page 8 back.

Mr. JENNER. OK.

Mr. DOAR. Paragraph 111.

Mr. GILL. On March 22, 1973, Ehrlichman telephoned Krogh. Krogh has testified that Ehrlichman told Krogh he had learned from Mitchell that Hunt was stable and would not disclose all; Ehrlichman told Krogh to hang tough. Krogh also has testified that Dean told Krogh on March 22, 1973, that Krogh should not do anything rash.

Mr. DOAR. This testimony of Mr. Krogh with respect to the conversations with Mr. Ehrlichman is found on the bottom of page 10 with respect to what Mr. Ehrlichman told him; and on lines 18 and 19 on page 11 of the same document with respect to what Mr. Dean told him. Tab 112.

Mr. GILL. Prior to March 27, 1973, David Young, at Ehrlichman's request, delivered to Ehrlichman's office the special investigations units files on the Pentagon Papers investigation. Young has testified that on March 27, 1973, Ehrlichman told Young that Hunt might reveal the Fielding break-in, that Ehrlichman had recently discussed the Fielding break-in with Krogh, who during that conversation said that he was responsible and that Ehrlichman had not known about the break-in until after it occurred. Young also has testified that he told Ehrlichman that he felt sure Ehrlichman had been aware of the California operation and that this fact was reflected in the documents delivered to Ehrlichman.

According to Young, Ehrlichman said he would keep those memorandums because they were too sensitive and showed too much forethought. Ehrlichman has denied removing documents from the file.

Mr. DOAR. The testimony of David Young with respect to his conversation with Mr. Ehrlichman is found in the other grand jury material of David Young dated August 23 on pages 108 through 114.

Mr. GILL. The particular discussion about what the documents show between Young and Ehrlichman is on page 112 about Mr. Ehrlichman's decision that he had better keep the memorandums because they were too sensitive and showed too much forethought.

Mr. DOAR. That is on page 112, lines 14, 15, 16, and 17.

Mr. SEIBERLING. What date are we talking about?

Mr. DOAR. I am talking about the grand jury testimony on Thursday, August 23, 1973.

Mr. GILL. The particular documents that were kept are listed on

page 128, and that included the August 11 memo and the August 26 memo.

Mr. DOAR. If I understand this correctly—and I think I do—David Young in March turned over certain documents from the Plumbers file to Mr. Ehrlichman. These documents include the memorandum of August 11, which we referred to this morning. If you would go back to 109, page 109 of the grand jury testimony, the question was asked at line 14:

What do you recall about the discussion with Mr. Ehrlichman on or about the 27th of March about the Fielding break-in?

A. I will give you my recollection on the basis of notes that I have used to refresh my memory made on the 29th of May, I believe.

Mr. Ehrlichman's secretary had called me on the previous Friday. It may have been the 23d of March. He said would I gather the files that we had on the Pentagon Papers investigation. What I did was put together a briefcase of the most important papers that gave the general view of what had gone into the investigation, at least July, August, and September.

On Monday, which would probably have been the 26th, they were given to Mr. Ehrlichman's secretary.

Then on Tuesday the 27th, Young went over to talk to him and he said that he wanted to review the files because it appeared that Mr. Hunt might be going to go public on the California matter or on the California operation.

He indicated that the California matter related to Dr. Fielding's office. Tab 113.

Mr. GILL. On March 27, 1973, the President met with H. R. Haldeman and John Ehrlichman. The President decided that a new nominee for FBI Director should be announced at the time that Patrick Gray's name was withdrawn. The President said that a judge with prosecuting background might be a good nominee. Haldeman told the President that Hunt was appearing before the grand jury that day and he did not know how far Hunt was going to go.

On March 28, 1973, Hunt was given immunity and ordered to testify before the grand jury. On the same day, Ehrlichman telephoned Attorney General Kleindienst and stated that the President might want to see the Attorney General in San Clemente on Saturday, March 31.

Mr. JENNER. With respect to the immunity, the paragraph says Hunt was given immunity and ordered to testify. That is imposed immunity.

Mr. DOAR. Tab 114.

Mr. GILL. On March 31, 1973, John Ehrlichman and H. R. Haldeman met with Attorney General Kleindienst at San Clemente, Calif. There was a discussion of Judge Matthew Byrne, Jr., the presiding judge in the ongoing criminal trial of Daniel Ellsberg, as a potential nominee for FBI Director. Ehrlichman has testified that he told Kleindienst that the President had instructed Ehrlichman to contact Byrne and Kleindienst expressed wholehearted approval of the meeting. Kleindienst has testified he does not recall Ehrlichman indicating that he planned to talk with Byrne, because if Ehrlichman had, Kleindienst would have said this should not be done while the trial was going on.

The President has stated that Kleindeinst recommended Byrne as FBI Director and then Ehrlichman called Byrne.

Mr. DOAR. Mr. Kleindienst's testimony with respect to his lack of recollection of Mr. Ehrlichman ever indicating that he was going to talk to Judge Byrne is found on page 3572 of tab 114.2, where you see the second full paragraph. He said:

I have no recollection of Mr. Ehrlichman.

Before that, Mr. Kleindienst says:

"I don't know whether Mr. Ehrlichman suggested to me that I contact Mr. Byrne or not. I do know that in that conversation, I said, or I believe that I did, my recollection is that I have not talked to Matt Byrne since the Ellsberg trial started. I said I expressed good wishes to him through mutual friends in Los Angeles, but that he and I have just not talked together since the Ellsberg trial started. Neither one of us wanted, at least I, and I am sure he felt that we wanted anybody to think from the appearance of justice I was going in his back chambers and trying to get some special consideration for the government in that very significant and vital case.

I have no recollection of Mr. Ehrlichman ever indicating to me at that meeting he himself was going to talk to Judge Byrne. Because of the standard that I had set for myself in not talking to Judge Byrne throughout this trial, if Mr. Ehrlichman had indicated to me that he was going to I am confident that I would have said John, you cannot do that while this trial is going on, or at least you should not. Really you, on behalf of the President, are really no different than I, a member of the President's family. In any event, when I first learned of the fact that Mr. Ehrlichman had contacted Judge Byrne, I know I registered a feeling of surprise that such a meeting had occurred.

Then at the very end, Attorney General Kleindienst describes the status of the Ellsberg trial:

It was just about ready to come to a conclusion, the evidence was just about in, it was going to the jury, and because of the delay that had already occurred I didn't think there was that kind of a problem.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. May I just ask, in respect to the paragraph, Mr. Doar, the last sentence, it states that the President has stated that Kleindienst recommended Byrne as FBI Director, and then Ehrlichman called Byrne. I think it kind of raises a question as to whether Kleindienst really did recommend Byrne. Apparently, the answer is that he had recommended him, at least to an FBI man that was interviewing him. He was asked to give his recommendations and——

Mr. DOAR. Yes.

Mr. RAILSBACK. I just did not think that was very clear when read in context with the preceding sentence.

Mr. COHEN. Is there any independent determination of how much time or how much of a case was left to present in the Ellsberg trial between the time that the judge was contacted and the time it would have gone to the jury with instructions? Have you done any investigation on that?

Mr. DOAR. Not other than the interview that Mr. Jenner and I held with Judge Byrne.

Mr. COHEN. Will we be furnished with the product of that interview?

Mr. DOAR. I can tell you that he estimated that there was about 6 weeks left in the trial at the time that he was contacted by Mr. Ehrlichman the first time on the 5th of April.

Mr. WIGGINS. That is not all that you learned, is it?

Mr. DOAR. No; that is not all that I learned, if I got the question.

Mr. WIGGINS. I understood the question to be: Will you furnish us with the product of your conversation with Judge Byrne? When you answered as you did answer, my question is: Will you give us more of that conversation?

Mr. DOAR. Yes, we will, if the committee wishes.

Mr. JENNER. Congressman Wiggins, Congressman Cohen asked two questions. Mr. Doar in his immediate response was answering his first question. He had already stated that we would furnish the interview material.

Mr. WIGGINS. Is it relevant to what we are doing? I take it you have made a decision not to include the product of your conversation with Judge Byrne in our material.

Mr. DOAR. Well, in the next book, we go into the contact and what happened with the Judge Byrne trial. It is true that we did not include a summary of the interview that Mr. Jenner and I had with Judge Byrne, but that was the consistent policy that we followed with respect to those interviews throughout the presentation.

Mr. WIGGINS. Well, goodness. I hope you will share with us the ultimate question of whether there was any mention at all of the Ellsberg trial in the discussion.

Mr. DOAR. Well, there was a mention of the Ellsberg trial.

Mr. WIGGINS. I think that information ought to be shared with us.

Mr. DOAR. Well, I would be happy to share it with you.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. There is one question that is rather perplexing to me. From this tab 114.2, I gather that Judge Byrne was a Democrat in California and appointed U.S. attorney by President Johnson and then appointed U.S. judge by President Nixon. Is that correct?

Mr. DOAR. That is correct.

Mr. FLOWERS. So he had already received one Presidential appointment, then?

Mr. DOAR. He had received a Presidential appointment from President Nixon.

Mr. FLOWERS. The tab says that he stayed on as U.S. attorney for 1 year after the Republicans came into the White House; then the President appointed him a U.S. district judge, with the advice and support of the two Democratic Senators from California.

Mr. DOAR. I would like, Mr. Chairman, to respond more fully to Mr. Wiggins' question right now, because I do not want to leave any misapprehension or misunderstanding about the conversation.

When Mr. Jenner and I interviewed Judge Byrne, we asked him about the trip that he made to San Clemente at Mr. Ehrlichman's request to discuss an appointment unrelated to the *Ellsberg* case. While he was there, Mr. Ehrlichman suggested that they take a walk out on the lawn. They went out and took a walk on the lawn and while they were out on the lawn, the President apparently observed them out on the lawn and came out, and according to Judge Byrne, joined the conversation. In one way or another, Judge Byrne was identified as being the judge who was trying the *Ellsberg* case to the President. And the President said something to this effect, according to Judge

Byrne: "Isn't that case over yet? It is taking longer to try that case than it took me to get the war ended in South Vietnam?" And they exchanged one or two more pleasantries, the President and Judge Byrne. Then the President turned around and went back to his study.

Mr. Ehrlichman and Judge Byrne went back and continued their discussion about the FBI directorship.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Doar, is it not true also that Judge Byrne was a former FBI agent and therefore would be a logical one to consider for the job?

Mr. DOAR. Yes; he is a former FBI agent and the Presidential statement that is here indicates that Mr. Kleindienst recommended him, that he had FBI experience, he had prosecutor's experience, he had judicial experience, and he was a Democrat.

Mr. OWENS. He recommended him when, Mr. Doar?

Mr. DOAR. My recollection is that he recommended him sometime in the latter part of March 1973.

Mr. OWENS. Before the Ellsberg trial?

Mr. DOAR. During the Ellsberg trial.

Mr. OWENS. There was no consideration of him to be FBI Director prior to the Ellsberg trial, is that right?

Mr. DOAR. No; because at that time, up until a few days before that, you see—the decision that Mr. Gray could not continue and be permanent Director was made in the latter part of March.

Mr. OWENS. I understand that, but he had not been considered prior, at the time Patrick Gray was nominated?

Mr. DOAR. I do not know that. Let me just check this.

No; he was not considered to our knowledge.

Mr. COHEN. Mr. Chairman, may I ask one more question?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Doar, I take it you are going to furnish the committee with the interview, but I understand it will be typed up and prepared in some memorandum form.

Mr. DOAR. Yes.

Mr. COHEN. Let me ask you on the conversation between Ehrlichman and the judge, whether or not they contemplated an immediate appointment to directorship upon the withdrawal of Patrick Gray, or whether they contemplated waiting until the end of the trial of the *Ellsberg* case?

Mr. DOAR. Judge Byrne made it clear that he could not consider the position until after the Ellsberg trial was over. At that time, the question came up as to when the trial would be over. At that time, Judge Byrne indicated that it would be about 6 weeks.

At that time, there was no consideration of an immediate appointment.

Mr. COHEN. Was it indicated also that they would hold the position open for the judge until they concluded the case?

Mr. DOAR. That was Judge Byrne's impression, although Mr. Ehrlichman indicated in the conversation that there were other people being considered for the job, but Judge Byrne had the impression

that he was the leading candidate, or the candidate. But Judge Byrne indicated he did not want to discuss it until after the trial was over.

Mr. COHEN. Thank you.

This is going to be reviewed tomorrow, is it not, Mr. Doar?

Mr. DOAR. Yes, it is.

The CHAIRMAN. This is the completion of this presentation?

Mr. JENNER. Mr. Chairman, the committee may wish to look at 3571 of tab 114.2, in which Mr. Kleindienst testifies as to his recommendations and the time of the conversation, the time when those conversations took place.

The CHAIRMAN. What tab was that?

Mr. JENNER. That is tab 114.2, printed page No. 3571.

Mr. GILL. The extra material that is in the second envelope you have received was some of the material that was requested this morning. It is extra pages of Mr. Ehrlichman's grand jury testimony in California surrounding the pages that were included. I think Mr. Krogh's statement is in there, too. His entire statement should be in there. That is what this envelope is.

Mr. SARBANES. Should this not be returned?

Mr. GILL. That envelope need not be returned, the one you received late this afternoon, the smaller one, is to be kept.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. On tab 106.2, my retyped from indistinct original has a confusing bit to me. The bottom of the first page ends with "date dictated" then the second page begins with "had approved the taking of possession of these files."

Who approved the taking of possession of these files as to which the Director wrote this?

Mr. GILL. Mr. Waldie, the entire interview with Mr. Miller is not there. The front page is included for purposes of identifying it and the back pages are what is relevant to that particular point in that paragraph. You do have Mr. Miller's entire interview at another paragraph, but those are just two of the pages of about a five or six page—the cover page and then the relevant page within it.

Mr. DOAR. If we could pick up the grand jury material and the transcripts and the envelopes, we will see to it that when the envelopes are returned to you, those pages will be marked.

Mr. WALDIE. Mr. Chairman, I am not through with that inquiry. I am still trying to get an answer.

Mr. JENNER. Congressman Waldie, as a point of personal privilege, would you yield just a minute?

I have a concern since some of the gentlemen are leaving. Since I have made professional reputations on all your behalfs to Judge Gesell, I do wish to be sure that we get all the transcripts of the grand jury testimony. If you will look on your desks and be sure that in your envelopes, you have, as to the Young and Krogh testimony, there are five, two of Krogh and three of Young. Take the Young ones, August 23, 1973; next, August 22, 1973; next, February 6, 1973.

As to Mr. Krogh, January 29, 1974, and January 30, 1974.

Then there are four transcripts: February 28, 1973, March 13, 1973; March 21, 1973; and April 16, 1973. Those are nine documents.

And Congressman Waldie, thank you very much for yielding to me. I had that concern.

Mr. FROEHLICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. Mr. Chairman, I would like to set the record straight. I left this room at 11:45 a.m., this morning and I was later contacted on the floor by a member of the staff that my office was contacted indicating that confidential, highly secret information was missing from my envelope. I am informed that the August 22, 1973, Young testimony and the January 29, 1974, Krogh testimony is missing. I did not have it, I did not take it with me, I know not where it is. These papers were left out on my desk when I left at 11:45. I say that for the record.

The CHAIRMAN. We will recess, to meet at 10 o'clock tomorrow morning.

[Whereupon, at 5:05 p.m., the committee recessed to reconvene at 10 a.m., Wednesday, June 12, 1974.]

IMPEACHMENT INQUIRY

Executive Session

WEDNESDAY, JUNE 12, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Robert D. Sack, senior associate special counsel; Richard H. Gill, counsel; R. L. Smith McKeithen, counsel; Gary W. Sutton, counsel; Robin Johansen, research assistant; John Peterson, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

Mr. MARAZITI. Mr. Chairman? May I—thank you, Mr. Chairman, for recognizing me. I would like to briefly state that I asked the chairman to consider seriously the advisability, and I make the request, of calling a business meeting for tomorrow to consider a vote of confidence for the Secretary of State. I think it is essential to clear the name of the Secretary. But more important than that, that is only a personal matter, I think it is important and essential that we enable the Secretary of State of the United States to properly conduct the foreign policy of the United States. I do not think we can take the chance and the possibility that this great man will resign as he has threatened to do.

I think we will be the laughingstock of the world if we permit him to resign or allow him to resign because of our lack of action here.

He has stated that he will accept this vote of confidence from any reliable part, and I think we should act.

The CHAIRMAN. I would like to advise the gentleman that the committee has no jurisdiction in this matter, and the committee is certainly already burdened with its own responsibilities. And I believe that such a meeting would be entirely out of order, and therefore, I advise the gentleman accordingly that there would be no such meeting called for that purpose.

Nonetheless, I share with him a feeling about Dr. Kissinger, and I hold him in very high regard insofar as the conduct of foreign policy.

I would want, however, to call attention to another matter that I think is important for this committee to know the chairman's views on at least. The chairman has tried to express what I believe to be the rules of the committee, and the Chair's attempting to comply with those rules. And if sometimes those rules are probably not acceptable to some of the members, it is only because the committee has already established rules, and I am sure that if the committee wants to undertake to change the rules, why then we would have to consider that question.

But yesterday Mr. St. Clair made an offer to the committee, and I make this statement in order to clarify my position, made an offer of a brief which he thought would be appropriate as the President's response to the presentation that has been made to date on the question of Watergate and the Watergate coverup through April 30. I advised Mr. St. Clair that in accordance with the rules of the committee that such a response could only be made at the conclusion of the presentation, and that then, only as the committee might determine. And the Chair intends to comply with this.

However, last night, during the course of a press conference, Mr. Wiggins was asked a question concerning this matter, and Mr. Wiggins stated that he certainly would like to have whatever information was available to him, and certainly if this information was available to him, well he would certainly appreciate it. However, he would certainly comply with the Chair's ruling in the matter, and I would like to state that while I suggested that any member may, if he wants to solicit the information, do so, I think frankly, that this would not be in compliance with the rules, and this, in my judgment, would be a breach of the rules. And I think, I would hope that Mr. St. Clair knows this as well, and I am sure that he does. And the Chair intends, in accordance with the rules, at the appropriate time, to invite Mr. St. Clair to respond as the committee will determine. And we will give Mr. St. Clair sufficient time to respond not only as to the question of Watergate and the coverup, but all other matters that are pertinent to this inquiry, to make suggestions in accordance with the rules and recommendations concerning the calling of witnesses. And I am sure that every member of this committee knows that the Chair will be fair, and yet will be firm insofar as the rules of the committee are concerned.

Mr. McCLORY. Mr. Chairman? Mr. Chairman, I would like to make a couple of comments and then refer to the subject you just touched upon.

First of all, I would like to say that I have great confidence in this committee, particularly in the staff of the committee to retain confidential information. And as far as I know, the staff has lived up to

its expectations to maintain and guard the secret and private and confidential information which has come to them and been entrusted to them. I think this committee has done a good job up to a point. I think there is a distinct deterioration insofar as our ability to retain the confidential information, and I deplore that. I think that it really is impairing our good name.

Mr. RAILSBACK. Will you yield?

Mr. McCLORY. And as a result of that, I certainly hope that we can respect these confidences, that we cannot be charged with leaking information that is damaging to individuals, and which results in all kinds of serious consequences which I think impinge on our own reputation and the respect for this committee.

Mr. RAILSBACK. Would you yield?

Mr. McCLORY. Yes; I yield to the gentleman from Illinois.

Mr. RAILSBACK. I am not going to mention his name, but a group of us met with the managing editor of one of the major papers, and his comments were—and I guess I was the only member of the Judiciary Committee there—that I just got the feeling that he thought our conduct was becoming a joke. And I mean that. I also had the highest respect for our committee, and I was particularly proud that the staff did not leak anything. And now, all of a sudden, everybody is selectively leaking, and pretty soon we are going to have the anti-Nixon people leaking, which they already have, and then we are going to have some of the pro-Nixon people leaking, and then what it is going to do is ruin Congress as an institution, and it is going to ruin our committee.

Mr. McCLORY. Mr. Chairman, I would just like to comment with reference to the response that was offered by Mr. St. Clair and say this: That I think your judgment is correct. I think it would be preferable for members to withhold their desire to see the important document that I know we will receive in due course. And in that connection, Mr. Chairman, though, it is going to be essential for us to have a meeting of this committee. And, as I understand, we will not have a meeting this week now. But, I am hopeful that at the meeting we have we can consider such things as when we are going to open these hearings, when we will receive Mr. St. Clair's response, decide definitely on the subject of witnesses, and these other subjects that will face us immediately upon conclusion of the initial presentation, which I understand will end next Thursday.

So I am hopeful that prior to next Tuesday we can have the kind of business meeting which is essential to make these decisions so that we can move forward expeditiously as soon as the initial presentation is concluded.

The CHAIRMAN. Well, the Chair wants to assure the gentleman that this is what we hope to do. And as I stated to Mr. McClory, I have been hopeful that we could get together with staff and with Mr. Hutchinson to lay out some schedule of this sort so that some of these matters that can only be discussed, and can only be really decided in business meetings may be taken up. And I think taken up in an orderly fashion. And frankly, this is one of the reasons why I think it becomes all the more important, and I hope you understand why I emphasize, that the document that has been prepared by Mr. St. Clair

as a response not be distributed at this time, because I think it presents a distorted picture of the committee.

While there have been leaks, we have attempted to conduct the inquiry in a reasonable fashion in executive session, and while some members may have breached the rules of the committee, and that is deplorable, nonetheless, the committee had voted in order not to defame or degrade anyone, or any character, or any individual, that it go into executive session so that when the presentation had been completed then a decision could be made as to how we release all of this material to the public, and release it in its entirety so that there is a complete picture, rather than have a presentation on the part of one which is, I think, to present a distorted picture.

Mr. McCLORY. Mr. Chairman, could I just ask this additional question? Could we have a definite date now for this meeting, say next Monday or next Tuesday?

The CHAIRMAN. No; I would rather hold off and discuss this and think this out.

Mr. McCLORY. But, it is your intention to have a meeting before we come to the termination of the initial presentation?

The CHAIRMAN. Well, I really have not thought that that would be the orderly way to do it. Next week we have further presentation to be made which relates to the Cox episode and the tax matter, and I thought that rather than digress from that procedure, that we just then prepare an agenda as to what the meeting might undertake to decide, and that the meeting would come afterward. But, giving sufficient time to the members so that they might be able to at least know what the agenda is going to be, and know what the discussion is going to be.

Mr. LATTA. Mr. Chairman?

Mr. McCLORY. Well, that sounds a little bit like a meeting next Friday, Mr. Chairman.

The CHAIRMAN. Well, that could be.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta?

Mr. LATTA. Mr. Chairman, I think that your desire is a proper one that we do not request this material from Mr. St. Clair. But, I do appreciate the fact that you said that we have a right to request it, and I am interested in this material, as every member of this committee. And I would like to inquire if we do acquiesce in your wishes, and do not request it, and do not obtain it, how much time are we going to have to study that material at the time it is turned over? Are we going to be handed it today and expected to make a decision on it tomorrow, or are we going to be able to go into it in some depth, or what is the chairman's thoughts on this matter?

The CHAIRMAN. Well, this is the reason why I felt that we would put off the calling of the business meeting until we are able to determine just what matters might be discussed, how we might invite Mr. St. Clair to respond, what the committee might determine that response to be, what the nature of that response should be, and the time that it would take, and that the committee members would naturally have to make a determination in this area, and that the other question, which is a very important question, the question of calling witnesses,

which I am sure all of the members are interested in, they might be given an opportunity beforehand to consider whom they want to call and submit these recommendations and suggestions along with Mr. St. Clair.

And this is on the part of any member and the staff. However, in accordance with the rules that are laid down, and there are rules, and we are attempting now to prepare some memorandum which the committee members might have in order that these matters might be at least considered by them. And then they might make their judgment as to what suggestion they might want to make.

Mr. LATTA. So I gather that what the Chair is saying is, that we are going to have adequate time to review the St. Clair memorandum after it is given to us?

The CHAIRMAN. We will have an adequate time to review all of the memorandums and all the material.

Mr. LATTA. I thank the chairman.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate?

Mr. HUNGATE. Along the line of a discussion of a meeting next week, I would hope there would be one next week. I would at the same time hope it might be in the latter part of the week for this reason. The Subcommittee on Criminal Justice has a set of criminal rules on which we have now received some responses, and it may be necessary to seek a tolling of the statute because those rules become effective August 1 if we do not act, so this could afford us time to have a meeting and perhaps to have that also on your agenda for brief action.

The CHAIRMAN. Well, the Chair intends that the meeting, if scheduled next week, and I believe that it can be scheduled next week, would be at the latter part of the week because we have a few days within which to have staff present the Cox episode and the tax question, and I think it is going to take at least 3 days. Is that not correct, Mr. Doar?

Mr. DOAR. That is correct.

Mr. WIGGINS. Mr. Chairman, a brief comment.

The CHAIRMAN. Mr. Wiggins?

Mr. WIGGINS. Mr. Chairman, it is apparent at this moment that at some time Mr. St. Clair will be given an opportunity to do something, and that something will be dependent upon the will of the committee.

The CHAIRMAN. That is correct.

Mr. WIGGINS. It would be very helpful, I would suggest to the chairman, and to the committee, in making that judgment if Mr. St. Clair were invited to submit a written proposal to you of what he desires to do so we will have that before us when we consider what we will permit him to do. I think that maybe if that suggestion from you were to come promptly, so that he will have an opportunity to reflect upon it, and I am not thinking about any substantive presentation.

The CHAIRMAN. I have already asked Mr. Doar to discuss this matter with Mr. St. Clair.

Mr. WIGGINS. All right; fine, thank you.

The CHAIRMAN. I think we had better proceed.

Mr. DOAR. Mr. Chairman, at your desk this morning is a memorandum entitled "Report on Impoundment of Funds." I apologize to

the committee for being unable to get this to you last evening together with the special report of the Joint Committee on Congressional Operations. This is part of the material that we will discuss with the committee tomorrow.

We are now reading in book No. VIII, tab No. 115. Before I get into this book, which completes the presentation with respect to the Judge Byrne matter and the electronic surveillance disclosures with respect to 17 wiretaps, several members have asked us to furnish a separate notebook for the statements of information so that the statements of information that are in the front of the book can be set apart in a separate book. I would like to respectfully suggest to all of the members that we would be happy to do that for you, and put dividers in each book, and that the members that have had us do that have found that this is a very useful way of keeping notes on the material and not having to go from one book to another. That is, if you take out the statements of information that are contained in the front of the books, and put them in a separate book, and if the members have no objection, I will ask a member of my staff to contact each one of you and to offer to do that for you, and provide another notebook for that purpose.

The CHAIRMAN. Mr. Doar, what is this material?

Mr. DOAR. That is the impoundment material.

Mr. McCLORY. Mr. Chairman, I see that each of the members have this material. Is this being furnished to counsel, is it being furnished to our committee counsel?

Mr. DOAR. Well, Mr. Jenner.

Mr. JENNER. It should have been. My instructions were accordingly, and if Mr. Zeifman and members of the committee staff do not have it, I will see that that is rectified promptly. It should have been delivered this morning. And to Mr. St. Clair.

Mr. Chairman, may I give my copy to Mr. St. Clair?

The CHAIRMAN. Absolutely.

Mr. DOAR. Tab No. 115.

Mr. GILL. On April 4, 1973, John Ehrlichman telephoned Judge Byrne. Ehrlichman had testified that he asked Byrne if this was an appropriate time, in light of the present situation in the Ellsberg trial, for a conversation to discuss a nonjudicial Federal appointment, and that Byrne responded they could talk right away.

Judge Byrne has stated that Ehrlichman requested a meeting on a subject which had absolutely nothing to do with the case. On April 5, 1973, Ehrlichman met with Judge Byrne at San Clemente, Calif. Ehrlichman has testified that he told Judge Byrne to walk away if a subject arose which he felt might impinge on his ability to fairly try the *Ellsberg* case.

Ehrlichman told Judge Byrne that the President was interested in knowing whether or not Judge Byrne had an interest in being nominated as the Director of the Federal Bureau of Investigation. Ehrlichman has testified Judge Byrne indicated a very strong interest in the position.

Judge Byrne has stated that he advised Ehrlichman that his initial reaction was that he could not and would not give consideration to any other position until the *Ellsberg* case was concluded.

During this meeting the President was introduced to Judge Byrne and exchanged greetings with him.

Mr. DOAR. Tab No. 115.1 is Mr. Ehrlichman's log, which shows that Mr. Ehrlichman and Judge Byrne met on Thursday, April 5 at 4 p.m. And this is the log of Mr. Ehrlichman while on April 5 he was at San Clemente. Members will remember that this was during the time that Mr. Ehrlichman was conducting an investigation with respect to the Watergate matters. You will notice that on the following page, on that Monday, he met with Paul O'Brien, and in the Watergate presentation we went into some detail with respect to that meeting.

And on the following day at 11:30 he met with Herbert Kalmbach at the parking lot of the Bank of America. And we went into some detail with the members of the committee about that. This is so that you get the context and the time frame of the meeting with Judge Byrne.

Tab 115.2 at page 2617 is Mr. Ehrlichman's testimony before the Senate select committee. Within the bracket at the bottom of the page it is clear that Judge Byrne was contacted by Mr. Ehrlichman at the President's instruction, and that on the next page, 2618, you will notice at the 5th line, the 4th and 5th lines, that Mr. Ehrlichman has testified that when the Attorney General had come out to San Clemente, according to Mr. Ehrlichman, he had told him of the President's instruction and the fact that Judge Byrne was going to come to San Clemente for a meeting.

According to Mr. Ehrlichman, the Attorney General expressed his wholehearted approval of that meeting.

But down about the 6th line, the committee members asked yesterday about what was the status of or the stage the *Ellsberg* case was in. Mr. Ehrlichman said that it was his impression that he had by the newspapers that the case was in its last stage. And then if you go farther down, Mr. Ehrlichman relates his initial conversation with the judge. And he said, and this is right above the middle of the page:

So I said to the judge, "This is not a conversation which is urgent. We need not have it now, but at some point in time I would like to have this conversation."

And the judge responded, "I see no reason why we couldn't talk right away."

Then at the bottom, the two paragraphs at the bottom, Mr. Ehrlichman testifies and relates about their 5 minute conversation while they were walking toward the bluff or on the bluff, and at the office building in San Clemente he advised Judge Byrne that the President was interested in knowing whether or not Judge Byrne was interested in that position.

And on 2619 he relates at the top paragraph the contact between Judge Byrne, the President and himself after the President came out of his office. And he relates how they chatted just briefly, not about the case, obviously, but just about pleasantries. The conversation lasted perhaps 30 seconds and the President went back into his office.

Mr. MAYNE. Mr. Chairman?

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, in response at that point to Mr. Wiggins'

colloquy with you yesterday, apparently Judge Byrne's conversation with you and Mr. Jenner is somewhat at odds with this account of Mr. Ehrlichman's concerning the time spent with the President and the subjects of conversation. Am I correct in that? Your response to Mr. Wiggins was that Judge Byrne did, in fact——

Mr. DOAR. Yes.

Mr. WALDIE. The President brought up the subject of the *Ellsberg* case?

Mr. DOAR. I am prepared to tell you just exactly what Judge Byrne told us in that interview.

Mr. WALDIE. I think that would be helpful if the Chair would permit it. May we have that?

The CHAIRMAN. Mr. Doar.

Mr. LATTI. Mr. Chairman, I would like to raise a point at this stage. I would like to know how the gentleman from California got the information for the question he has just propounded? Is it something that escaped us on this side, or where did you get that information?

Mr. WALDIE. No; Mr. Wiggins raised the point yesterday.

The CHAIRMAN. There was a question raised yesterday by Mr. Wiggins.

Mr. WALDIE. Mr. Doar responded precisely.

The CHAIRMAN. On that point.

Mr. WALDIE. And if you——

Mr. LATTI. It escaped me yesterday then.

The CHAIRMAN. Well, I think it would be helpful for the committee to have this information.

Mr. DOAR. Mr. Jenner and I, or I contacted Judge Byrne some time in the month of April and told him that I felt that I had a responsibility to interview him with respect to the matter involving the contact with Mr. Ehrlichman about the FBI position. And I asked him if he would come to Washington to confer with Mr. Jenner and I at some time at his convenience, and he agreed to come, and he came to our office on Sunday, the 5th of May, 1974.

Present at that interview beside myself was Mr. Jenner and Mr. Gill. Mr. Gill kept detailed notes of that interview.

Mr. LATTI. Mr. Doar, I am sorry to interrupt you. Are you referring to some affidavit here?

Mr. DOAR. No, I am not. I am not.

Mr. LATTI. We do not have anything in this book?

Mr. DOAR. No, we do not. We have not followed the practice of including interviews in the book, Congressman Latti.

Mr. LATTI. But you have taken affidavits and inserted them in the book.

Mr. DOAR. Where we have taken affidavits we have inserted them in the book, but this is just a statement.

Mr. LATTI. Why didn't we take an affidavit of Judge Byrne?

Mr. DOAR. Well, because we interviewed him, and it was just a matter of time, and it was my judgment and the staff's judgment that if the committee wanted this kind of detailed information it might prefer to have it in person. So, we did not take the affidavit.

Mr. LATTI. Well, you have to take affidavits in person.

Mr. DOAR. Pardon?

Mr. LATTI. You have to take affidavits in person.

Mr. DOAR. No; I mean—

Mr. LATTI. That does not seem to be a reason why you could not have taken an affidavit and put the man under oath. Just because he is a judge does not indicate to me that he should not have been put under oath.

Mr. DOAR. Well, we did not do that.

Mr. LATTI. Thank you.

Mr. DOAR. Judge Byrne is relating about the walk that they had, and he told us that they went back toward the office complex and President Nixon walked out of an office toward them. They exchanged greetings and hand shakes, and the President stated that he wanted to thank Judge Byrne for taking time to come down to talk to them. There was a general social conversation about how youthful Judge Byrne was and what his actual age was.

Mr. Ehrlichman repeated to the President that Judge Byrne had said it would take another 4 to 6 weeks for the case to be over. The President responded that he had not been following it closely, that there did not appear to have been much written in the papers about it, and he did not care much about the case. He observed that it appeared to take as long to get the case tried as for the President to end the war in Vietnam.

Judge Byrne is quite clear in his impression that the President was cognizant that Mr. Ehrlichman had talked with the judge about the FBI directorship, although the President never actually stated that. Then Judge Byrne continued that after a few minutes the President went back into the office that he had come out of.

Mr. McCLODY. Mr. Chairman, what is the date of that interview?

Mr. DOAR. May 5, 1974.

Mr. McCLODY. Now, we received an index of all of the materials that we have relative to the whole inquiry. Was that included in the index that we have back in our offices, do you know?

Mr. DOAR. Well, I think it was.

Mr. McCLODY. I am wondering if we might, if it is not, would it be possible to have an index of supplementary material?

Mr. DOAR. Yes.

Mr. McCLODY. Things that have come after?

Mr. DOAR. We are preparing that now.

Mr. EDWARDS. Mr. Chairman, a question.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Did the President know Judge Byrne before this meeting?

Mr. DOAR. The President and Judge Byrne had met once.

Mr. EDWARDS. When?

Mr. DOAR. I think the time when Judge Byrne was the head of Scranton Commission, delivered the Scranton Commission report to the President, along with Mr. Scranton. He was the executive director.

Mr. EDWARDS. Thank you. And were other people considered for the FBI job along with Pat Gray?

Mr. DOAR. According to Mr. Ehrlichman, there were other people being considered besides Judge Byrne.

Mr. EDWARDS. At the same time that Gray was being considered?

Mr. DOAR. Well, I do not know what the circumstance was when Mr. Gray was being considered.

Mr. EDWARDS. Is there any evidence that Byrne was under consideration when the vacancy took place with the death of Hoover?

Mr. DOAR. Not to my knowledge.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Doar, did you talk to the Judge about his second conversations with Ehrlichman?

Mr. DOAR. Yes; I did.

Mr. DENNIS. Did he agree that he made the date for the second conversation?

Mr. DOAR. Yes; he did.

Mr. DENNIS. And did he give you any reason why they met in a park in Santa Monica and took a walk together?

Mr. DOAR. Yes. He gave a very logical explanation for that. He said that he talked to his father and someone else who he did not disclose, and felt that he would like to have a further talk with Mr. Ehrlichman about that. And he called Mr. Ehrlichman, and he said he would like to see him. Mr. Ehrlichman said that he was coming to Santa Monica to see his mother, and he said, or Judge Byrne knew Santa Monica very well, and he knew where Mr. Ehrlichman's mother lived, and they arranged to meet at the corner of the street up where Mr. Ehrlichman was going to be. And they then walked along the street, which happened to be on the other side, on the bluff overlooking the Pacific.

Mr. DENNIS. Did the Judge tell you whether or not he told Ehrlichman he was interested in the job as FBI director?

Mr. DOAR. He said that he made it clear to Mr. Ehrlichman that he could not consider or he could not think about it or give it consideration until the case was over. But, he did express an interest in the job.

Mr. DENNIS. That was the reason for the second conversation, I take it, is that correct, his interest?

Mr. DOAR. Well, I think there were two reasons. I think Judge Byrne also wanted to make it clear that he could not discuss the matter until the case was over.

Mr. DENNIS. So he had a second meeting in order to tell him he could not talk about it?

Let me ask you one more question. At the time that the judge finally dismissed the case, is it a fact that the counsel for the defendants were preparing to raise this meeting with Ehrlichman as a matter of misconduct on the part of the court, as a part of their reason for mistrial?

Mr. DOAR. I think that it was a matter of public knowledge at that time, and Mr. Gill says that it was already raised.

Mr. DENNIS. It had been raised and was pending before the court then at the time that he had entered the dismissal?

Mr. GILL. No, sir. He had denied it. The motion was based on that already.

Mr. DENNIS. He denied that motion, and then gave the dismissal on the other grounds, is that correct?

Mr. GILL. Not at the same time.

Mr. DENNIS. No, no. I know. But, I mean he ruled on that one, and then he took the next one and granted the motion, is that correct?

Mr. DOAR. Yes.

Mr. DENNIS. I thank you.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Mr. Doar, down at this end I think yesterday there was an indication that Judge Byrne had himself been a special agent of the FBI. The statement of Ehrlichman on page 2618 would suggest that he was not, because in the last paragraph he said: "He told me a number of his experiences with the FBI; that is to say, he had been a U.S. Attorney, he had had a number of experiences with the Bureau."

Inasmuch as we have that other impression from yesterday, I wonder what the actual fact is as to that?

Mr. DOAR. The fact is that he was not a member of the FBI. I spoke inaccurately yesterday.

Mr. MAYNE. Thank you.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Doar, have you talked with Mr. Kleindienst about this matter? Apparently there is a discrepancy in the record that both the President and Ehrlichman indicate that Byrne was recommended by the Attorney General. And from what I read yesterday, the Attorney General, Mr. Kleindienst, denied that he was the initiator of this recommendation, saying it would be highly improper for the President or Ehrlichman or anyone else within the White House to make such an approach while the case was pending.

Have you attempted to resolve that discrepancy?

Mr. DOAR. We have an appointment with Mr. Kleindienst, but we have not seen him yet.

Mr. COHEN. And I think——

Mr. DOAR. And we will attempt to resolve that.

Mr. COHEN. All right. Thank you.

The CHAIRMAN. Mr. Doar.

Mr. OWENS. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Might I just ask if we cannot get the results of that interview for this afternoon and in the future, in the immediate future, get a list of all of the persons who have been interviewed and any who have also been given sworn statements so that the staff and the committee are both fully appreciative of what each other are doing?

Mr. DOAR. We will do that.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Do we know, Mr. Doar, whether others were contacted at about this same time relative to the possibility of being named FBI Director?

Mr. DOAR. No; we do not.

Mr. OWENS. In relation to the time of this contact, can you remind me what day, how soon after that, did Mr. Gray withdraw his name?

Mr. DOAR. Judge Byrne related that he heard that Mr. Gray withdrew his name that day.

Mr. OWENS. April 4 or 5?

Mr. DOAR. April 5; yes.

Mr. OWENS. And Mr. Kelly was named on what date?

Mr. DOAR. Mr. Gray continued to be Acting Director until the 28th of April, and then Mr. Ruckleshaus was appointed Acting Director for 75 days.

Mr. OWENS. Mr. Kelly's selection was not announced until——

Mr. DOAR. Not announced for about 3 months following that.

Mr. OWENS. So in relation to the dismissal, so far as Judge Byrne knew, the job was still open at the time he dismissed to *Russo* case, the *Ellsberg* case, is that correct?

Mr. DOAR. Yes. Yes.

Mr. OWENS. Did you say yesterday he was left, Judge Byrne was left, with the firm impression that it would be held open until the case was concluded?

Mr. DOAR. That was Judge Byrne's impression.

Mr. OWENS. And his qualifications in sum that brought him to the attention of Mr. Ehrlichman were apparently the Scranton Commission, a year as prosecuting attorney and a year as Federal judge? Is that the sum total of his experience?

Mr. DOAR. No; he had much longer experience than that as a U.S. attorney.

Mr. OWENS. He served as a judge for a year?

Mr. DOAR. He had served as a judge for a year. He had first been appointed by President Johnson but not confirmed by the Senate and he continued on as U.S. attorney under Attorney General Mitchell and he was appointed to the District judgeship by President Nixon and was confirmed by the Senate and he had been on the bench about a year.

Mr. OWENS. Is there any testimony anywhere about what brought him to Mr. Ehrlichman's attention?

Mr. DOAR. Mr. Kleindienst.

Mr. OWENS. And what brought him to Mr. Kleindienst's attention?

Mr. DOAR. Mr. Kleindienst knew Judge Byrne.

Mr. OWENS. Personally?

Mr. RAILSBACK. Would you yield?

Mr. OWENS. Yes.

Mr. RAILSBACK. Mr. Chairman?

Mr. OWENS. If I have the floor.

Mr. RAILSBACK. Yes. Yes. Thank you for yielding.

Mr. Cohen asked you a question, Mr. Doar, which I again think may have clouded it. I know exactly what he was asking, but I think it is important that everybody remember that Kleindienst, when he was interviewed by the FBI, apparently recommended highly two people, one of whom was Judge Byrne, and I think Henry Peterson was the other one. But, I mean there is no question but what Kleindienst definitely did recommend Judge Byrne?

The CHAIRMAN. Might I merely just again remind the members that I think we are dwelling on some issues, and I think that if the members will hear the presentation and then read the material they probably would resolve these questions that are in their own minds without taking up the time of the other members.

Now, we are not going to get through with this inquiry, despite the

fact that everyone talks about wanting to conclude it, if the members insist on taking up these issues, and just elaborating on them at some undue length. Now, the Chair is going, the Chair is going to merely recognize members who want clarification.

And this is all we have stated as being the reasons for recognition of the members. Mr. Doar.

Mr. DOAR. Tab No. 116.

Mr. GILL. On April 6, 1973, Judge Byrne requested a second meeting with Ehrlichman. On April 7, 1973, Ehrlichman met with Judge Byrne in a park at the corner of Ocean Avenue and Montana Street in Santa Monica, Calif.

Ehrlichman has testified that Judge Byrne again evidenced a very sharp interest in the FBI directorship. Judge Byrne has stated that he, at Ehrlichman's suggestion, had reflected on his initial reaction and reaffirmed that he would not consider nor in any way discuss the position as Director of the FBI while the *Ellsberg* case was pending before him.

Mr. DOAR. Judge Byrne's remarks from the Bench on the 30th of April and on the 2d of May are found in the tabs at 115 and 116 behind the tabs and the subparagraph 2, subparagraph 3 of 115 and subparagraph 2 of 116. Tab No. 117.

Mr. DANIELSON. Mr. Chairman, a clarification point.

I have been following this on 115.1, which is John Ehrlichman's log. There is no entry for Saturday, the 7th, which was the day of the supposed meeting in the park at Santa Monica.

Can we not explain why there is no entry, or are no entries for Saturday?

Mr. DOAR. Well, I believe that Mr. Ehrlichman was visiting his mother.

Mr. DANIELSON. But, he was also meeting Judge Byrne at the park, I mean, and I am not quarreling. This is what we have. Where did we get this log? There is a gap here of 1 day.

Mr. DOAR. This log was furnished to us by the White House. This came from the Senate select committee, this particular log.

Mr. DANIELSON. I see. Could the staff, Mr. Chairman, see if they can find the missing link here of 1 day, because there was a business meeting, a meeting with Judge Byrne.

The CHAIRMAN. Well, if staff can do that, why I am sure it will.

Mr. DOAR. Tab 117.

Mr. GILL. On April 11, 1973, Chapin committed perjury before the Watergate Grand Jury in responding to questions about White House involvement with Segretti.

Chapin testified he wanted to protect Haldeman in his testimony, and reported to the White House immediately after the appearance that Haldeman's name had been mentioned in connection with hiring Segretti.

Mr. DOAR. I would like to call the committee's attention specifically to 117.1, which is the indictment. And on page 2 of that indictment I would ask the committee to mark on the document there that the jury found Mr. Chapin guilty of the first question and answer under paragraph 4, and not guilty of the second question.

They found Mr. Chapin guilty of the first answer and not guilty

with respect to the second answer. This is set forth in the docket, but it is hard to read in the docket. And I think if you mark on your page, on page 3 then, count 2, the jury found Mr. Chapin not guilty of that.

On count 3 the jury found Mr. Chapin guilty on that count, and I do not believe that count 4 was submitted to the jury.

I would also like you to know that that Mr. Chapin has appealed. The appeal is pending.

Well, excuse me. I misspoke on page 2. The jury found Mr. Chapin not guilty of the first answer to the question and guilty of the second answer. I just reversed that.

The CHAIRMAN. Are you referring to count 2, Mr. Doar?

Mr. DOAR. Yes; I am. Count 1. Count 1, page 2.

The CHAIRMAN. Mr. Doar, I think everyone is confused at this point.

Would you please go through those again?

Mr. DOAR. All right. If you would mark on the top of page 117.1 that Mr. Chapin has filed an appeal, has taken an appeal from the verdict of the jury. Then on page 2 under paragraph 4 there are two questions and two answers. With respect to the answer to the first question, the jury found Mr. Chapin not guilty. With respect to the answer to the second question, the jury found Mr. Chapin guilty.

On the next page, on count 2, on page 3, the jury found Mr. Chapin not guilty.

Mr. GILL. Page 5 of the docket—

The CHAIRMAN. How about count 3 or count 4?

Mr. GILL. There is a summary on page 5 of the docket which is 117.2. It says they were guilty on counts 1 and 3, not guilty on count 2. As to count 1, the defendant was found guilty of having knowledge, and then not guilty of having discussed it.

The CHAIRMAN. Thank you.

Mr. DOAR. Then on page 5, if you look at page 5, count 3, the jury found Mr. Chapin, as Mr. Gill has said, guilty of that count. Count 4 was withdrawn. No. 118.

Mr. GILL. On April 14, 1973, the President, Haldeman, and Ehrlichman discussed at several meetings Haldeman's involvement with Segretti and the resulting legal or political problems in that connection. They discussed whether Haldeman should make a public disclosure of this activity.

Mr. DOAR. This material we have extracted from the edited transcripts and set that forth in the tabs behind the material. Tab No. 119.

Mr. GILL. On April 15, 1973, John Dean told two of the Watergate prosecutors, Earl Silbert and Seymour Glanzer, that E. Howard Hunt and Gordon Liddy had participated in a break-in at the office of a psychiatrist of Daniel Ellsberg. And a memorandum dated April 16, 1973, Silbert reported to Henry Petersen the information he received respecting the break-in.

Petersen ordered a Department of Justice investigation to determine if there was any information in the possession of the prosecutor in the Ellsberg trial then being conducted in Los Angeles which emanated from the burglary of the psychiatrist's office.

On April 18, 1973, Petersen received two memorandums stating that no information had been derived from such a source.

Mr. DOAR. The committee members might want to examine 119.1, which is the cryptic memorandum of Mr. Silbert to Mr. Petersen to the effect that he received information on the 15th of April that at an unspecified date Gordon Liddy and Howard Hunt burglarized the offices of a psychiatrist of Daniel Ellsberg to obtain the psychiatrist's files relating to Ellsberg.

And then if you look at 119.2, that is a memorandum from John Martin, who was an attorney in the Internal Security Division. And the committee members may recall that at the end of March 1973 the Internal Security Division was abolished and the attorneys were transferred to the Criminal Division, and placed under the charge of Mr. Petersen. And John Martin was the attorney in the Internal Security Division who was the attorney supervising the *Ellsberg* case for the Department of Justice at the home office in Washington. You will notice that Mr. Martin states unequivocally in the second paragraph that he was familiar with all of the reports, memoranda and other investigative material in the case of *United States v. Russo*.

Based upon my familiarity with these materials, I am able to state with equivocation that I am completely unaware of any information developed in this case which could have possibly emanated from such a source.

And this memorandum of John Martin was forwarded by a routing slip to Mr. Petersen on the 18th of April. And you will see that in 119.3. And it is a memorandum from Kevin Maroney to Mr. Petersen saying the people most familiar with the evidence in Ellsberg, and this is 119.3, "are unaware of any info which could have come from such a source and so am I."

And Mr. Petersen relates how, in the next tab, which is 119.4, within the brackets, Mr. Petersen relates how Mr. Maroney came back with a note and a memorandum from one of his staff, and that would be John Martin, in which "they said we have no such information nor does the FBI" Then Petersen said:

We asked him to check whether or not there was a psychiatrist involved and what have you. They did and they turned up from the FBI records that an individual by the name of Fielding had been interviewed.

Now, the committee members will remember that yesterday or the day before in one of the earlier volumes there was testimony by the Bureau that they attempted to interview Dr. Fielding and get Dr. Fielding's affidavit, and somewhere around the 28th or 27th of July, 1971, he had declined to be interviewed.

And then Petersen said "Well, that clicked, that led us to the photograph, and then we made the connection."

Now, the committee will remember that the photographs were delivered by the CIA to Attorney General Kleindienst and Mr. Petersen on October 24, 1972. And Mr. Petersen examined the photographs. These were the pictures of Dr. Fielding's office and with Gordon Liddy standing in front of the office, a parking lot and maybe one or two pictures inside of the office. And they looked at them, and they did not make any sense of them and they just put them in the file.

I think that the committee members should make a note that at that time there was still in existence the Internal Security Division, which was handling the *Ellsberg* case, and so the interview with Dr.

Fielding, and the matters with respect to Fielding, the *Ellsberg* case, were in another division and Henry Petersen would not have known anything about that in the ordinary course of the Justice Department business.

Mr. COHEN. What is the response to the question at the bottom of that page?

Mr. DOAR. We will get to that at the next tab.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, is there anything on the photographs that were delivered by the CIA to the Justice Department that indicated that this was the office of Dr. Fielding?

Mr. DOAR. Yes. Dr. Fielding's parking space had his name on it.

Ms. HOLTZMAN. I see.

Mr. GILL. And Liddy was standing in front of that.

Mr. HOLTZMAN. Thank you.

Mr. OWENS. Are the pictures available?

Mr. DOAR. The pictures are available. Tab No. 120.

Mr. GILL. On April 16, 1973, from 10 o'clock to 10:40 a.m. the President met with John Dean. The President stated that the electronic surveillance of Kraft was done through private sources, because Hoover did not want to do it, but it was finally turned over to the FBI. The President stated that the surveillance was necessary because leaks from the NSC were in Kraft's and other columns.

Then the President stated that this information was privileged and Dean agreed.

Mr. DOAR. Tab No. 121.

Mr. GILL. On April 17, 1973, the President stated to William Rogers that he was thinking of Judge Byrne for the FBI directorship.

Mr. DOAR. Tab No. 122.

Mr. GILL. On April 18, 1973, the President had a telephone conversation with Henry Petersen. Petersen told the President that the prosecutors had obtained information that the office of Daniel Ellsberg's psychiatrist had been burglarized by Hunt and Liddy. The President replied that he knew of that operation, that it was a national security matter, and that the Department of Justice was not to investigate it. The President also ordered the Watergate prosecutors not to question E. Howard Hunt about these activities as they had planned. Petersen immediately relayed the President's orders to Silbert.

Mr. DOAR. Tab 122.2 is Mr. Petersen's testimony before the Senate select committee. And at page 361 Mr. Petersen, or beginning at the bottom of 3630, Mr. Dash asked Mr. Petersen did he, meaning the President, "indicate that he knew anything about that break-in when you told him about it?"

Mr. PETERSEN. No, he did not. Mr. Dash. I have to be very careful there. I would like to rephrase the question for you if I can. I suppose it—

Mr. DASH. Please do.

Mr. PETERSEN. The question probably would be did he indicate he knew anything about it rather than anything about the break-in, and the President said when I told him, "I know about that. That is a national security matter. You stay out of that. Your mandate is to investigate Watergate."

Now, he did not say he knew about the burglary. He said he knew about it—about the report. I think that is a vital distinction to be recognized.

Then he relates how he called Mr. Silbert and told Mr. Silbert to just forget it.

Tabs 122.3, 122.4, and 122.5 are President Nixon's statements with respect to the Watergate and with respect to the Ellsberg matter.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Mr. Doar, I appreciate your clarifying that last point as you have, that the President said that he was familiar with the matter rather than with the burglary as such.

But, is it not necessary that in the tab itself, 122, that clarifying language should be inserted there also? Other people eventually are going to be reading this thing, and it seems to me that that sentence which says they talked about the office of the psychiatrist had been burglarized, and then you say the President replied that he knew of that operation, that seems to refer pretty specifically to the burglary. And you have cleared it up to us now orally, but I respectfully suggest that it ought to be cleared up in the tab also.

Mr. SEIBERLING. Would the gentleman yield?

Mr. MAYNE. I will be happy to yield.

Mr. SEIBERLING. Well, Mr. Petersen had just finished telling the President about the burglary, so his further testimony does not make anything whatsoever when he says that he did not say the President knew about the burglary. Petersen had just told him about the burglary, so I think that the tab is quite a fair statement.

Mr. RANGEL. Regular order.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I have a question of counsel. Mr. Silbert is mentioned. He has been nominated as a U.S. district attorney and his confirmation is coming in the Senate. He is mentioned here in several instances, and I wonder if we have gotten all of the information on Mr. Silbert that the Watergate committee had and the Senate Judiciary has and if we have given them all of the information we have?

And finally, Mr. Chairman, have we suggested to the Judiciary Committee and the Senate that they might want to delay that confirmation until we conclude this investigation, because he is still pretty much a viable character in the proceedings here.

The CHAIRMAN. Well, I do not know whether or not it should be up to this committee to suggest to another committee that it ought to defer consideration of a nomination.

Mr. BROOKS. No, but I think we could suggest to them that we still have under consideration all of these matters, and they might want to take that into consideration before reaching a final conclusion on that confirmation, and to notify them as to what we are now doing.

The CHAIRMAN. Well, I hardly think that this would be appropriate committee action for us to be suggesting to other committees if the committee would consider that this is a matter of a question of the President's involvement, or noninvolvement, and not the question or not Mr. Silbert, who is an individual who is mentioned, and I think that the question as to Mr. Silbert, as we consider it, is whether or not there was anything that he did or failed to do, which I guess eventually the President might be responsible for.

Mr. MAYNE. May I have an answer to my question, Mr. Chairman?

Mr. BROOKS. Could I just complete the resolution of this?

Mr. Chairman, I would hope that we would notify the committee of our consideration of Mr. Silbert's activities. They can do with it what they want. But, I do not think it is amiss for us to have the Senate Judiciary Committee know what we are doing, that we are taking a look at what Mr. Silbert has done and they could then take whatever action they deem appropriate.

I do not suggest that this committee or any committee suggest to the Senate Judiciary Committee what they ought to do, just that we should inform them what we are doing with the hope that they might benefit from it.

Mr. MAYNE. May I have an answer to my question, Mr. Chairman?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Congressman Mayne, the entire material behind the tab. I think, will satisfy you that the President knew of the break-in prior to the time that he had been advised of it by Mr. Petersen.

But, if you remember, the reply suggests that the President knew of the operation, and if that means he knew of it before it occurred, then we should correct that because that is not the fact as far as we know.

The information we have furnished you heretofore, and the information that is contained behind the tabs is that the President learned of this from Mr. Dean on the 17th of March, the break-in and he said the President replied he knew of that operation, and that is from the President's statements which are contained behind the tab.

Mr. MAYNE. You are intending—excuse me.

The CHAIRMAN. Would it be appropriate, Mr. Doar, merely to include in that tab just verbatim, what the supporting information really states, and that would clarify it?

Mr. DOAR. All right.

Mr. DANIELSON. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. I hate to delay the proceedings but I would like to disagree strongly with what Mr. Brooks said about communicating with the Watergate committee.

I think that that would be distorted, that would be distorted if we sent a message such as that. There would be an implication inherent in it that we somehow question the suitability of Mr. Silbert for U.S. attorney. There is not anything that I have seen on this matter that the committee does not already have itself.

Mr. BROOKS. Would the gentleman yield?

The CHAIRMAN. I think the Chair has already stated—

Mr. HOGAN. This would not be done.

Mr. BROOKS. Would the gentleman yield?

Mr. HOGAN. If I have the time I will yield.

Mr. BROOKS. Nobody suggested that we tell the Judiciary Committee—I want to make clear again to you and the chairman—that we should not approve him, or that we thought he was a criminal, or should not be approved, just to notify them that we are still studying this matter which he is one of the characters. That is all.

This is so they could then, if they want to, go right ahead and confirm him tomorrow, and if they do, that is their business.

Mr. HOGAN. I understand that, Jack. But the problem is as Marshall McLuhan said, the media is the message, and there will be a leak in the paper which will discredit Silbert if it goes public, that somehow or other we have him under suspicion.

And I think that would be an irreparable harm to him.

Mr. BROOKS. I think they ought to evaluate it whether he is confirmed or not.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. A matter of clarification on the tab, and it is a confusing point that has come up in other tabs. Where Hunt and Liddy are involved, the instructions are always not to interrogate Hunt, but to exclude Liddy. I gather that is always the case, but can you tell me why that is so?

Mr. GILL. Except that Liddy would not talk.

Mr. WALDIE. I beg your pardon?

Mr. GILL. Liddy made it clear that he would not make any statements to anybody, so interrogating him was a futile exercise.

Mr. WALDIE. So that am I correct, though, that every time the two are involved that it is Hunt who is being protected against interrogation, not Liddy.

Mr. DOAR. The directions are not to interview Hunt about this matter.

Mr. WALDIE. Even though this is all subsequent to the delivery of the money to Bittman, is it not?

Mr. DOAR. Yes.

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I allude to your recent instruction to counsel to have the tab reflect verbatim. I am going to respectfully suggest that staff also include behind this tab at some point at least the one page from the edited transcripts which reflect that Dean told the President on, I believe, March 17, about the actual burglary. This would enable whoever reads this tab to have a full understanding of what was meant by that comment.

The CHAIRMAN. I think that suggestion is appropriate.

Mr. SEIBERLING. Mr. Chairman, could I ask on one clarifying matter?

The CHAIRMAN. Mr. Seiberling?

Mr. SEIBERLING. Was the *Ellsberg* case prosecution in the Division that Mr. Petersen was in charge of?

Mr. DOAR. It was not when it was initially commenced, but it was on April 18.

Mr. SEIBERLING. So this was perfectly within the sphere of his responsibilities?

Mr. DOAR. Certainly.

Mr. SEIBERLING. And the statement that his only concern was Watergate, the President's statement, was not a correct statement as far as his official responsibilities are concerned?

Mr. DOAR. His responsibilities included the—he was head of the Criminal Division and had supervision of the *Ellsberg* case.

Mr. SARBANES. When was the Internal Security Division merged or abolished and the jurisdiction over the *Ellsberg* case within the Department therefore shifted from that Division to the Criminal Division; do you know?

Mr. DOAR. I think it was in the latter part of March 1973.

Mr. Petersen did testify before the grand jury, members of the committee, on August 23, 1973, as tab 122.6 and at page 75—first on page 75. Mr. Petersen, at page 74, the middle of the page, line 12. He is telling about how he called the President back. The President had made an inquiry of him. Then at line 16, the President said, "What else is new?" I said, "I got this report that Liddy and Hunt burglarized Fielding's office." Then there is a discussion with respect to tape recordings and if you will then turn to the top of page 75, Petersen continues:

In any event, he said, "What else is new?", and then I dropped the next bombshell. It was that Dean had informed Silbert that Liddy and Hunt and company had burglarized Dr. Fielding's office who was Ellsberg's psychiatrist.

The President said: "I know about that. That is a national security matter. Your mandate is Watergate. You stay out of that."

"I said; "Well, I have caused a check to be made and we don't have any information of that nature in the case." I said: "Do you know where there is such information?", and he said "no".

He said: "There is nothing you have to do." Then I got off the phone.

Tab 123.

Mr. GILL. On April 19, 1973, the President discussed with his special counsel, Richard Moore, Ehrlichman's possible criminal liability arising out of events connected with the *Ellsberg* case.

Mr. DOAR. Tab 124.

Mr. GILL. On April 25, 1973, Petersen delivered to Attorney General Kleindienst the Justice Department memorandums written by Silbert, Martin, and Maroney respecting the break-in of the office of Ellsberg's psychiatrist. They agreed that the information about the break-in should be disclosed to Judge Byrne.

Mr. DOAR. Henry Petersen testified before the Senate select committee at 124.1 that after his conversation with the President which I have just read to you on the 18th—this is at page 3631—that he proceeded to ponder what the situation was and wondered whether or not it was producible under *Brady* and whether or not it might be required to be produced with respect to some other principle of law, other than *Brady*. He felt that the *Ellsberg* case, as you will see in the bottom paragraph, that the *Ellsberg* case was such a celebrated case, it would certainly have political overtones, that this type of thing ought to be disclosed, but "I really didn't quite know what to do."

You will remember that at that time, Mr. Kleindienst had recused himself of the Watergate matter, but Petersen went up to him and said, "Look, you are out of Watergate but you are not out of Ellsberg. I need some help." And he said that they spent most of that day—that is the 25th—talking about it and he related how he told Mr. Kleindienst at the bottom of the page that the "President instructed me to forget about it, but I thought he ought to go to the President and if he was unhappy about it we would simply have to take the consequences." And he said that Mr. Kleindienst agreed with this and he went to the President and the President agreed.

At 124.2, page 3574, we have Mr. Kleindienst's testimony with respect to that day. He testified that he and Mr. Petersen reached a conclusion that this information should be transmitted to Judge Byrne and that the President should be advised immediately. Tab 125.

Mr. GILL. On the afternoon of April 25, 1973, Attorney General Kleindienst had a conversation with the President. Kleindienst showed the President the Justice Department memorandums relating to the break-in at the psychiatrist's office and informed the President that the information should be disclosed to the court in the *Ellsberg* case. The President authorized him to do so.

Mr. DOAR. At tab 125.1, at page 3574, Mr. Kleindienst testifies about calling the White House to see if he could come over to see the President. He said:

When I got back from my lunch in honor of Dean Griswold, soon thereafter I received a call from the White House that if I could come over right away, I could see the President. I did. I gave him—I had those memos, those papers with me.

The memos he is talking about is the recommendation of the Criminal Division that this matter be brought to the attention of the judge in the *Ellsberg* case immediately——

I had some—I had a couple of cases that, you know, I could discuss, you know, a little note pad, but I did not give those citations. He, without hesitation, one moment's hesitation, said that the course of action that I was going to pursue was the only thing possible to be done. He caused the memos to be xeroxed. He kept a copy of the memos and I left.

The meeting did not last very long because there was no problem in his mind or my mind or anybody elses mind as to what we had to do under the law.

Mr. Dorsen asked:

Did you have an impression one way or the other as to whether this was the first time that the President learned of these events?

Mr. Kleindienst said:

I do not know if I gathered that impression, Mr. Dorsen. I know he was very upset about it. He was very upset about it.

Mr. DORSEN. Did he say whether this was the first time he had heard this?

Mr. KLEINDIENST. To my recollection he did not, and I—I just would not know. The fact that he was so provoked, the language that he used to describe the idiocy of the event, indicated to me that he had not learned of it, you know, except just soon, but I do not believe I asked him—it was not my habit to interrogate the President of the United States and I do not—all I know is he was very, very provoked.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel?

Mr. RANGEL. Do we have any evidence of the Kleindienst-Presidential conversation?

Mr. DOAR. No; that was not included with the transcripts that we were furnished, the edited transcripts. I believe it was part of the request that we made.

Mr. RANGEL. It is requested?

Mr. DOAR. Yes; I think it is included in the subpoena that was refused.

Mr. RANGEL. OK. Well, you can have a staff member check it out to make certain that it is. Thank you.

Mr. DOAR. Tab 126.

Mr. GILL. On April 26, 1973, David Nissen, the prosecutor in the *Ellsberg* case, was instructed to file the four Justice Department memorandums relating to the break-in at the psychiatrist's office with the court in camera. Nissen filed the documents in camera after court had

adjourned at 2:45 p.m. At 4:05 p.m., Judge Byrne reconvened court and stated that the prosecutors had made an in-camera filing. He also stated that after examining the materials, he would not accept the filed materials in camera, and asked the prosecutors to advise him by the next morning as to what the Government's position would be with respect to turning the material over to the defendants.

The next morning, on April 27, 1973, Nissen informed Judge Byrne that the Washington office did not want the contents of the in-camera filing disclosed to the defense. Judge Byrne ordered that the information be supplied to the defense and in open court, read the memorandum from Silbert to Petersen dated April 16, 1973. Judge Byrne also ordered a Government investigation to determine if the defendants constitutional rights had been violated by the break-in.

Mr. DOAR. This paragraph may seem a little complicated, but the essence of it is that after the President's direction, the material was sent out to the U.S. attorney or the prosecutor, the prosecuting U.S. attorney, and he presented the documents to Judge Byrne in camera. Judge Byrne opened them up and read them, including the information that had come to the effect that Hunt and Liddy had broken into Dr. Fielding's office, who was Ellsberg's psychiatrist. Judge Byrne decided that that was not the kind of material that he could accept in camera and he asked—he gave the prosecutors until the next morning to advise him what the Government's position would be with respect to turning the material over to the defendants.

The next morning, Mr. Nissen told the judge that they did not want the contents turned over to the defendants, and Judge Byrne overruled that motion. In open court, he supplied the information to the defense and read the Silbert-to-Petersen memorandum dated April 16.

He then ordered, on his own behalf, a Government investigation—that is an FBI investigation—to determine if the defendants' constitutional rights had been violated by the break-in.

The committee members may want to look at the entire transcript of the material with respect to the things that the judge asked the Government to do. That is at tab 126.3. He wanted to know what information had been received and he wanted to know all the facts that the Government knew about the burglary, what documents, the contents of the documents that had been taken in the alleged burglary, what use was made of the documents, if any were taken, and he wanted a further investigation with respect to electronic surveillance. He requested that the Government make—advised that the Government had a duty to make a good-faith search of all the agencies, Government agencies, which might be aware of any information obtained as a result of the alleged burglary. And he wanted the material furnished forthwith. Tab 127.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I am not clear what the fourth memo is that was furnished. There was a memo of April 18, Morris and Maroney to Petersen, and April 16, Silbert to Petersen, and the Attorney General's memo back to Petersen on the 25th.

Mr. DOAR. It was a routing slip. Tab 127.

Mr. GILL. On April 27, 1973, FBI agents interviewed John Ehrlich-

man about the break-in of the office of Dr. Louis Fielding, Daniel Ellsberg's psychiatrist. Ehrlichman stated E. Howard Hunt and Gordon Liddy had been designated in 1971 to conduct an investigation of the Pentagon Papers' leak directly out of the White House. Ehrlichman stated that he knew Liddy and Hunt had gone to California to investigate Ellsberg's habits, mental attitudes, and emotional and moral problems. Ehrlichman stated he learned of the break-in after it had occurred and he then instructed Hunt and Liddy not to do this again. Ehrlichman told the FBI he did not know if any information had been obtained in the burglary.

Mr. DOAR. Mr. Ehrlichman's interview is found at 127.1, page 243, and behind is the 302 form dated April 27, 1973.

Mr. EDWARDS. Mr. Chairman, is there evidence that at the time this Ellsberg trial was going on, the Hunt memorandum maligning Mr. Boudin, Ellsberg's attorney, was being distributed?

Mr. DOAR. There was evidence that it had been given, back in August, to a member of the press, but we have no evidence that it was being distributed at this time, in April.

Mr. EDWARDS. So in other words, the memorandum was distributed before the trial started or during the pretrial?

Mr. DOAR. During the pretrial period. There was a first trial and selection of a jury and then there was an appeal and the jury was dismissed and they started over. The second trial, the one that this was involved in, started, I think, in the latter part of December 1972.

Mr. EDWARDS. Do we have evidence that Hunt did this on his own, or did he do it with instructions from a higher up?

Mr. DOAR. We have evidence that it was done by Mr. Colson.

Mr. EDWARDS. Thank you.

Mr. DOAR. That was one of the two matters that he pled guilty to, that he received this document about Boudin and delivered it to a member of the press. The member of the press has denied that he used the document in writing an article about Mr. Boudin, but there was no dispute about the fact that it had been publicly circulated by Mr. Colson.

Mr. EDWARDS. Thank you.

Mr. DOAR. I would like to call the attention of the members of the committee to the third, fourth, and fifth paragraphs of Mr. Ehrlichman's FBI interview.

Mr. Ehrlichman recalled that sometime in 1971, the President had expressed interest in the problem of unauthorized disclosures of classified Government information and asked him to make inquiries independent of concurrent FBI investigation which had been made relating to the leak of the Pentagon papers. Mr. Ehrlichman assumed this responsibility, and was assisted in this endeavor by Egil Krogh, a White House assistant, and David Young of the National Security Agency. A decision was made by them to conduct some investigation in the Pentagon Papers leak "directly out of the White House." G. Gordon Liddy and E. Howard Hunt were "designated to conduct this investigation."

Then Mr. Ehrlichman goes on to say that he knew that—

Liddy and Hunt conducted investigation in the Washington, D.C., area and were going to the west coast to follow up on leads. There was information available that Ellsberg had emotional and moral problems and Liddy and Hunt sought to determine the full facts relating to these traits. Hunt endeavored to prepare a "psychiatric profile" relating to Ellsberg. The efforts of Liddy and Hunt were directed toward an "indepth investigation of Ellsberg to determine his habits, mental attitudes, motives, et cetera."

Although Mr. Ehrlichman knew that Liddy and Hunt had gone to California in connection with the above inquiries being made by them, he was not told that these two individuals had broken into the premises of the psychiatrist for Ellsberg until after this incident had taken place. Such activity was not authorized by him, he did not know about this burglary until after it had happened. He did "not agree with this method of investigation" and when he learned about the burglary, he instructed them "not to do this again."

Mr. LATTA. Mr. Doar, point of clarification.

I think it is most important to this inquiry that we properly set forth in the tab that John Ehrlichman did not authorize this activity, meaning the break-in. I do not find any reference to that fact in the tab itself. You merely say that Ehrlichman stated he had learned of the break-in after it had occurred and he then instructed Hunt and Liddy not to do this again. So for some reason unknown to me, the statement, "such activity was not authorized by him," is not appearing in the tab and I think that it should.

Mr. DOAR. Congressman, that fact is in dispute. There was a tab yesterday to the effect that Mr. Krogh and Mr. Young had called Mr. Ehrlichman when he was at Cape Cod and told him about that they were going to go ahead with this covert operation, and Mr. Ehrlichman had not recalled that call, and he denied that he knew about the break-in.

There is some information in further tabs here. We have made no attempt to draw any conclusion one way or the other, but I think that is a conclusion that the committee has to draw. There is more evidence and material upon which the committee members may want to base their conclusions than just this 302 interview by Mr. Ehrlichman.

Mr. LATTA. Yes; but it seems to me that if you are going to refer to the FBI memorandum, which you did, that you ought to set this forth and if it is in dispute, say so.

Mr. DOAR. Tab No. 128.

Mr. GILL. On April 30, 1973, in response to an inquiry by defense attorneys, Judge Byrne disclosed that he had met previously with Ehrlichman at which time a possible Federal appointment was discussed, and that at the same time he had met with the President. Judge Byrne also turned over to the defense the three additional Justice Department memorandums relating to the break-in at the psychiatrist's office and ordered the Government to investigate and disclose all information that may exist concerning electronic surveillance of the defendants.

Mr. DOAR. Mr. Marshall, would you distribute the grand jury material?

We have one part of the grand jury material of David Young that I would like to redistribute to the members just for this next paragraph. This is 129.

Mr. GILL. On April 30, 1973, John Ehrlichman met with David Young. Ehrlichman told Young that his files were to go to the President because the Ellsberg operation was a matter of national security. Young was instructed to decline to answer any inquiries on grounds of national security and executive privilege. Young has testified that he expressed concern that Ehrlichman had not told the FBI that he had approved the California operation beforehand, and Ehrlichman

replied that he was not asked that question. Young has testified that Ehrlichman told him not to address the question of whether Ehrlichman had discussed the Fielding break-in with the President in advance of its occurrence.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Would you go back for just a moment to 128.1, dealing with the court statement of April 30, 1973, where apparently Matt Byrne had disclosed there had been a telephone call about his statement made regarding a meeting with the President. How did that come about? Do you have any information on that?

Mr. DOAR. Yes; some reporters for, I think the Washington Star, got into a conversation with the gardener out at San Clemente and he inquired who had been visiting there that day and for the last several weeks, and the gardener mentioned to the reporter that Judge Byrne had been there. A story appeared in the Washington Star about that. And after that story appeared, the defense made a motion and then Judge Byrne made the statement in open court.

A copy of the Washington Star story is in the tab. At 128.2 is the story from the Washington Star.

At 129, if the committee would look at the grand jury testimony of Mr. Young beginning at page 118, you will see at line 11 there that Mr. Young is testifying that he came back and met with Mr. Ehrlichman on the 13th in his office. Then he told him about the fact that he was going to resign. Mr. Haldeman and Mr. Kleindienst were resigning. He said, if you look at page 119, line 13, this is Mr. Young's testimony, "He said, I think, next, that they had discussed the matter with the President."

The question was "What matter?"

Mr. Young answered, "The California matter."

Again he brought up the fact that it had been discussed with the President. The President made it very clear that it was considered a matter of national security and the President had actually told the new Attorney General, Mr. Richardson, that it was to be considered such a matter, and that I, I think, as he said it, that the President said:

You and Bud Krogh in connection with this whole matter would not, if asked any questions with regard to it, would respond that it was considered a matter of national security and executive privilege and that we were not to discuss it, and that would be either on the Hill, with the grand jury, or the FBI.

Then on the next page, at the top of the page, Mr. Young says:

Up to the point where he said, I have been detailed from Mr. Kissinger's staff in NSR to try to make determinations or assess from the national security point of view, that Mr. Krogh had worked on it from his staff, and that Mr. Hunt and Mr. Liddy were involved in the project in an investigatory sense, that he was aware it might involve covert operations, but that he had learned about the California matter after it had occurred, and that he had told Mr. Krogh that no further actions like that should be taken.

Then Mr. Young continues:

I think it was at this point I said to him that the only thing that bothered me was the fact that he hadn't said to the FBI that he was aware of the California operation beforehand and, indeed, had approved the matter, and Mr. Ehrlichman replied that he was not asked that question by the FBI.

I think at that point I said—well, I just wanted to put it on the record, my view of how we had operated and that, basically, Mr. Krogh, that I didn't believe Mr. Krogh or myself—I knew I didn't, and I didn't think he did—had authority to undertake this.

Q. That Mr. Krogh—

A. I knew I didn't and I didn't think Mr. Krogh had authority to undertake anything of that magnitude and that it was his responsibility and that he either had that authority or I assumed that he would go to the next level.

Q. By "he" you are talking about Mr. Ehrlichman?

A. Mr. Ehrlichman. And in response to that he said, in effect, that I should not address the question of whether or not he talked to the President or discussed the matter with the President.

Now, Mr. Young was quite precise about this testimony. It happened that he had with him at that grand jury a memorandum of the meeting with Mr. Ehrlichman. That memorandum is produced at 129.2 and it was a grand jury exhibit—a SSC exhibit, excuse me.

If you look at the second to last paragraph on the page, you will see that David Young had made a note of this matter, this testimony that I had read to you just previously to call your attention to this particular document. The paragraph is bracketed on the right in this case, the second paragraph from the bottom.

The paragraph may not be bracketed on your copy, but it is the second paragraph from the bottom of the page, beginning "DY said to E that only thing bothers him is 'You didn't say'" and so on. That is at 129.2.

Mr. Ehrlichman's log of April 30 is 129.3. It indicates that on the 30th of April, Monday, the 30th, he met with David Young at 8 o'clock, Mr. Ehrlichman did, and then at 11 o'clock, he met with Bud Krogh. It was at this meeting that some of the documents, including the August 11 document, was turned over to Mr. Ehrlichman—no, excuse me. That was not at that meeting. That had been turned over several days previously. Tab 130.

Mr. OWENS. Mr. Chairman, could I just ask one brief question?

The CHAIRMAN. Mr. Owens?

Mr. OWENS. As I read that grand jury testimony on page 122 and again Mr. Young's notes here, I do not know whether the final sentence in the tab is accurate, where it says Young has testified that Ehrlichman told him not to address the question of whether Ehrlichman had discussed the Fielding break-in with the President in advance of its occurrence. Those final five words do not appear either by inference, I do not think, or in fact, at either the grand jury or the notes.

Am I wrong?

Mr. DOAR. I think in the context of the testimony of Mr. Young, that is what they were talking about. They were talking about he did not have the authority in advance to carry out such a type of activity and "we took it up with you and we assumed that you either had the authority or took it to a higher authority." They are talking about in advance of the occurrence.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I think the gentleman from Utah, though, is precisely correct that those words, "in advance of its occurrence" are not supported in either of the documents mentioned in the tab for being an authority for it and it is indeed an unwarranted assertion and assumption, very unfair.

Mr. DOAR. I respectfully suggest that it is not an unfair characterization of the information. I do not believe it is unfair. Tab 130.

Mr. GILL. On May 2, 1973, as a result of a renewed defense motion raising the propriety of Judge Byrne's meeting with Ehrlichman, Judge Byrne stated that he had met with Ehrlichman both on April 5, 1973, and April 7, 1973, and disclosed that the position discussed had been the FBI directorship.

Mr. DOAR. Tab 131.

Mr. GILL. On May 10, 1973, Judge Byrne received two memorandums, one from Acting FBI Director William Ruckelshaus and the other from Assistant Attorney General Henry Petersen. The Ruckelshaus memorandum stated that he had received a preliminary report indicating that Daniel Ellsberg had been overheard talking from the residence of Dr. Morton Halperin at a time when Ellsberg was a guest of Halperin. The Petersen memorandum informed Judge Byrne that the Government did not know how many interceptions of Ellsberg took place, when they took place, between whom they occurred, or what was said. Nor did the Government know what had happened to the tapes, logs, or other records pertaining to the surveillance.

Mr. DOAR. The Ruckelshaus memorandum is at the second page. It sets forth the fact of how Mr. Ruckelshaus learned that Ellsberg had been overheard. If you will look at the second page of 131.2, in the middle of the first paragraph—

A preliminary report which I received last night indicates that an FBI employee recalls that in late 1969 and early 1970 Mr. Ellsberg had been overheard talking from an electronic surveillance of Dr. Morton Halperin's residence. It is this employee's recollection that the surveillance was of Dr. Halperin and that Mr. Ellsberg was then a guest of Dr. Halperin.

That explains how finally Mr. Ruckelshaus was able to determine that Dr. Ellsberg was overheard. Then this led to the further investigation with respect to the files. Tab 132.

Mr. GILL. On May 10, 1973, former Assistant Attorney General Robert Mardian disclosed to agents of the FBI that at the direction of the President, he had delivered the 1969-71 wiretap records to Ehrlichman.

Mr. DOAR. This indicates the pace of the investigation. The disclosure by the agent was on the 9th; Mardian is interviewed by agents on the 10th in Arizona; and he advises that at the direction of the President, he had delivered the wiretaps to Mr. Ehrlichman at the White House. Tab 133.

Mr. SEIBERLING. A question, Mr. Chairman.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Are these the same documents that he said he delivered to the Oval office that he would not—

Mr. DOAR. Yes.

Mr. SEIBERLING. Thank you.

Mr. DOAR. Tab 133.

Mr. GILL. On May 11, 1973, Judge Byrne dismissed the indictment in the *Ellsberg* case on the grounds of governmental misconduct including the action taken by a special investigations unit established by White House officials to investigate Daniel Ellsberg and the inability of the Government to produce the wiretap logs on Daniel Ellsberg.

On that same day, at an interview which took place approximately 1 hour after Judge Byrne ordered dismissal, Ehrlichman informed agents of the FBI that records of the electronic surveillance delivered to him by Mardian were located in Ehrlichman's White House safe.

On May 12, 1973, William Ruckelshaus went to the White House and retrieved the electronic surveillance records from a room into which Ehrlichman's records had been moved following his resignation.

Mr. DOAR. When the judge got the word from Mr. Ruckelshaus that Ellsberg had been overheard, he was pressing and of course, attorneys were pressing every day for information about that. And of course, they could not locate that information for 2 or 3 days and finally, they found out, whether or not they got this information on the 10th from Mr. Mardian and the FBI then set out to try to locate Mr. Ehrlichman, who at that time, I believe, was in Seattle. Judge Byrne, however, concluded on the 11th, he made up his mind that he should dismiss the jury and conclude the case and he did so without learning of the fact of what had been contained in the overhearings of Daniel Ellsberg.

Mr. DENNIS. Mr. Chairman, may I inquire?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Have we or anyone ever learned what was in those overhearings?

Mr. DOAR. We have seen them. I have not seen them. Mr. Gill has seen them.

Mr. DENNIS. Whatever it was, it never came to the attention of the Ellsberg jury, is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. And nothing was found in the Fielding break-in, as I understand it, is that correct?

Mr. DOAR. Well, there is testimony that nothing was found in the Fielding break-in.

Mr. DENNIS. And had the fact of the Fielding break-in come to the Ellsberg jury?

Mr. DOAR. It may not have come to the jury. It came to the attention of the judge. I doubt that it would have come to the attention of the jury.

Mr. DENNIS. Inasmuch as the break-in was of Dr. Fielding's office, not Mr. Ellsberg's, and nothing was discovered, and the fact was unknown to the jury and whatever was said in these conversations back in 1969 and 1970 was also unknown to the jury, it has always puzzled me on what theory the court dismissed the prosecution. I read what he said here. I am still puzzled. It is like Justice Jackson said:

The more you explain it, the more I don't understand it.

Mr. RANGEL. Regular order.

Mr. DENNIS. Mr. Chairman, is it necessary to have that sort of remark every time I ask a question? I think Mr. Doar is quite capable of answering my question.

The CHAIRMAN. Mr. Doar will answer.

Mr. DOAR. Mr. Dennis, I think each member of the committee would want to read what Judge Byrne said in its entirety rather than have me try to characterize the judge's reasons.

Mr. DENNIS. Well, maybe you are right. Maybe we ought to talk about it later, but it has always puzzled me. It seems a very novel decision to me. Maybe I am wrong about that. Of course, it is done. I suppose it is only a matter of academic interest.

Mr. DRINAN. Mr. Chairman, point of clarification.

We have some few statements here of President Nixon about Judge Byrne when he is speaking to Secretary of State Rogers on April 17, 1973. I would ask counsel, do we have anything further that Mr. Nixon ever said about Judge Byrne before or after April 17 and prior to the dismissal of the case on May 11?

Pursuant to that, why did counsel want to talk to Judge Byrne? Because I am not certain that I see anything improper going on here. Would you just elaborate on that?

Mr. DOAR. Well, one of the matters that was subject to inquiry was what happened with respect to the discussion between Judge Byrne and Mr. Ehrlichman. Mr. Ehrlichman had testified to that. Judge Byrne had made a short statement in court. We thought it was appropriate to interview him to get the full information with respect to the contact, whether the case was discussed, what the circumstances were with the contact with Mr. Ehrlichman, what happened when he went down to San Clemente and the full details of that.

Mr. DRINAN. If I may ask the question, I suppose it is a conclusion, but you people have the evidence and you alone, since we do not have a written report. Did anything develop in your interview with Judge Byrne that is inconsistent with all the documents that we have?

Mr. DOAR. Yes; as I said yesterday, there was an indication in Mr. Ehrlichman's interview that when the President talked to him, they just exchanged pleasantries and did not discuss the *Ellsberg* case at all. Judge Byrne said that when they met the President, Mr. Ehrlichman said that he said the case would take about 6 weeks and they did discuss the *Ellsberg* case; the President said he had not paid much attention to it that, the case took longer, as I said I say the President said, than it took for him to settle the war in Southeast Asia.

The CHAIRMAN. To be precise, Mr. Doar, you are talking about mentioning the case rather than discussing it.

Mr. DOAR. That is right.

Mr. DRINAN. One last question, if I may. If this is essential, I am wondering whether there will be a written report by you and Mr. Jenner about your conversation with Judge Byrne?

Mr. DOAR. Yes.

Mr. DRINAN. There will be?

Mr. DOAR. Yes.

The CHAIRMAN. Will the members please return the transcript that was supplied?

Incidentally, I might mention that the document that was distributed—it is the document on impoundment, is it not?

Mr. DOAR. Yes.

The CHAIRMAN. We will recess until 2 o'clock.

[Whereupon, at 12:25 p.m., the committee recessed to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The Chair intends to continue the presentation until 4 when we will recess until 10 tomorrow morning.

Before I ask Mr. Doar to continue with the presentation, I would like to call the attention of the committee members to an article which appeared in the New York Times, and it was on the front page, which is a memorandum that apparently came from the Inspector, O. T. Jacobsen of the FBI to Mr. Walker, and the subject is "Sensitive Coverage Placed on Request of the White House." And there follows a summary of findings at our current inquiry regarding this matter, conducted pursuant to memorandum from Acting Director Ruckelshaus.

I merely want to call attention to the fact that this definitely was not leaked from this committee. The committee does not have this memorandum in its possession, and I am wondering just what games are being played. But, I just call attention of the committee members that this has hurt. Now, there is no question that there have been other leaks, and that some of the leaks have come from members of this committee, which are to be deplored. But, in this particular instance, and this is a very sensitive memorandum which relates to the question of wiretaps, and Dr. Kissinger, and General Alexander Haig as the source of some of the wiretap orders, and this definitely does not come from this committee. It is not of the possession of the committee staff as such, and I would call on Mr. Doar to further amplify.

Mr. DOAR. In paragraph 38 of our book, there is a document that contains the material that is in that document, but it is clear from examining the two documents, that the one we have is not that one, because there is all sorts of writing all over the one we have. And the Justice Department verified with me this noon that they never gave us that document.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. We have submitted to the members and at the members' desk is an envelope containing a resolution for inspection of the tax returns of President Nixon. I wonder if the committee would consider giving unanimous consent to the approval of that resolution so that we can obtain these tax returns, which Mr. St. Clair has, which the President has agreed to provide for us, and which he has issued as of June 7 an Executive order authorizing the release of this information to the Committee on the Judiciary.

The CHAIRMAN. Mr. Doar, I know that I had intended to discuss this with Mr. Hutchinson. Did you discuss this with Mr. Hutchinson? Mr. Jenner?

Mr. JENNER. No; I did not, Mr. Chairman.

Mr. DENNIS. Mr. Chairman, I want to reserve the right to object until we at least know what the ranking member thinks about it, and I mean Mr. Hutchinson as well as Mr. McClory. We have been very strict about agendas and business meetings, and if there is some good reason, and the minority leadership is agreeable, that is one thing. But, I shall reserve the right to object until that is at least explored.

Mr. McCLORY. Mr. Chairman, this was discussed with me or related to me yesterday, and this is, I think, rather a formality on our part in

order to get access. And since the request has come to us, it would seem to me appropriate for the committee to grant the unanimous request.

Mr. DENNIS. Mr. Chairman, may I inquire?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Has Mr. Hutchinson been consulted at all?

The CHAIRMAN. I intended to, and I regret that I did not. I have instructed Mr. Doar, when I knew this was going to be taken up, to discuss this with Mr. Hutchinson as well.

Mr. McCLORY. I talked to Mr. Hutchinson about a number of things I had, about five or six things that I did talk to him about. This particular subject came up yesterday in his absence, and I was just in on the conversation, and I was not making any decision. I am not making any decision now, I am only relating what occurred, and it does seem to me to be a formality which has been requested of this committee.

Mr. DENNIS. If the gentleman will yield, did you ask Mr. Hutchinson about it?

Mr. McCLORY. I have not talked to him about this at all, no. I say it occurred yesterday in his absence, and I was not even acting for him. It just happened that I was aware of the conversation taking place, and it did seem to me that there would not be any problem as far as the committee's unanimous consent.

Mr. DENNIS. Mr. Chairman, the gentleman from Michigan was here this morning, and I know he is available, and I have heard nothing about this before. I do not know whether anybody else over here has or not, but I think he ought to be consulted.

The CHAIRMAN. First of all, might I amplify a bit. Ordinarily the Chair, together with the ranking minority member, agree on the requests that are made of the various agencies of the Government. There was some problem insofar as the Internal Revenue Service was concerned. At the direction of the Chair the counsel then discussed this matter with the Internal Revenue Service and the Secretary of the Treasury, and they were advised that if the committee were to get a simple unanimous consent request resolution, that they would have no objection to releasing the material.

Ordinarily it is done over the signature of the chairman, the request.

Mr. McCLORY. Mr. Chairman, am I not correct in stating that counsel has discussed this with counsel for the President?

Mr. DOAR. Yes; and the way this material has been made available is by act of the President, by an Executive order of the President in making his returns available to this committee. And the Executive order was signed on June 7, 1974. The Commissioner of Internal Revenue advised me that in order to implement the Executive order what would be needed would be a resolution of this committee.

Mr. McCLORY. Mr. Chairman, I understand that Mr. Hutchinson will be here in a few minutes, and I would suggest that we resume the discussion after he returns.

The CHAIRMAN. We will defer the action on it until such time as Mr. Hutchinson arrives.

Mr. BROOKS. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I have a question on the letter we are proposing to send to Mr. Simon, on paragraph 2, line 4. Reading along it says, "I

designate John Doar, special counsel to the committee, and such other members of the committee staff as may be named by Mr. Doar." I would suggest they ought to be named by you and Mr. Hutchinson as representatives of the committee, because I do not believe they are going to give all of this to the special counsel unless it is in the name of the Judiciary Committee. I think it ought to read, "Be named by me and/or in conjunction with Mr. Hutchinson."

The CHAIRMAN. The letter is perfectly satisfactory to me since I am designating Mr. Doar to pick what other members he chooses.

Mr. BROOKS. It may be a waste of time to think we retained some jurisdiction. I will withdraw that as a point, and you can do whatever you want.

Mr. DENNIS. Mr. Chairman, I have a suggestion too. It seems to me we might designate minority counsel along with the majority, or at least make some suggestion that Mr. Doar designate minority counsel. I think that would be a reasonable suggestion too.

The CHAIRMAN. Well, they are all reasonable suggestions. The question is whether we want to expedite this inquiry, and I think that as chairman I have designated Mr. Doar to continue this kind of at least inspection of the materials, and then the committee makes its final determination. Now, if we are going to nitpick about everything, we aren't going to get anywhere.

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. I certainly do not desire to nitpick. I am just a little bit concerned about the absence of certain operative words. What we want related to the President's tax returns really does not constitute his returns as much as our desire to procure the tax audit, the tax file, that which has been prepared by the Internal Revenue Service as a result of its investigation. Now, I recognize that it is conceivable that tax audit and report, or file could be included among factual data, documents, et cetera. But, I am also reminded of a response Mr. Ehrlichman gave this morning when he said, "I was not asked that question." And I am wondering if the IRS may come back to us and say we were not asked for the tax audit, or some other person say that we were not specific in that regard.

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. Well, I suppose that they could say that. The question is whether or not, however, at this posture we proceed with the inquiry and at least get these returns that are going to be made available to us so that based on the inspection of those we will know what else is to be done. We are making a resolution of the House to demand the audit, the complete audit.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, it is my understanding, unless I am not interpreting this right, that, in fact, the Executive order signed by the President, and the purpose of this resolution does mean that, one, we can get the audit from IRS? And I would like Mr. Doar to respond to that, if that, in fact, is the case. And second of all, does it also mean that not only do we get the audit but we get all of the work papers, all of the investigation that was done concerning this

matter, and any letters sent to the President as well as all of his financial data that relates to these tax returns? Is that correct, and is the understanding proper that the language means, and the President's intent by signing the Executive order covers these items?

Mr. LOTT. Mr. Chairman?

Mr. MEZVINSKY. Mr. Doar, can we get an answer to that, please?

Mr. DOAR. Congressman, when I talked to Mr. St. Clair about what we wanted, I indicated that we would like to obtain from the Internal Revenue Service the President's 1969 through 1972 income tax returns, the audits of those returns by the IRS, including the working papers and documents in connection therewith, and also the notification of the President, if there was one in writing, as to that audit. And my understanding from Mr. St. Clair was that the President had agreed to make that information available, and this Executive order is one of the ways whereby that can be made available to a committee of Congress.

In the Internal Income Tax Regulations the term "return" is broadly defined to include materials including reports and documents, papers, memoranda, evidence taken, and about another 10 lines of material. And I would be very surprised if we were not going to get the complete audit and included in this would be the complete audit. And that is my understanding with Commissioner Alexander, subsequent to the Executive order.

Mr. SEIBERLING. Well, Mr. Doar—

Mr. MEZVINSKY. So we can get all of that? And I would add also, is the presumption right that we can also do like we did when we looked at Gerry Ford's returns? We can also review the bank accounts, and the accounts at the bank that justify the returns? Is that proper, all of the financial records as a backup for those returns? We did that with Mr. Ford. And I presume—

Mr. DOAR. There was no discussion about that. I do not know exactly what that means. There was no discussion about that.

Mr. SEIBERLING. Would the gentleman yield? Would the gentleman yield on that point?

Mr. MEZVINSKY. Sure, I would be glad to.

Mr. SEIBERLING. Well, if that is your understanding, Mr. Doar, should not the word "all" be after the word "including" in line 3 so that it says, "including all other records," et cetera, because otherwise you have got an opportunity for them to pick and choose.

Mr. LOTT. Parliamentary inquiry.

Mr. SEIBERLING. I wonder if we could get an answer to that question?

Mr. DOAR. The reason why we used those words is that is exactly the words that were used in the Executive order.

Mr. SEIBERLING. I see. Well, I guess that answers it.

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. Mr. Lott.

Mr. LOTT. I certainly share the chairman's hope we would not get to nitpicking on that letter at this point. And in that connection I wonder if all of this is an order anyway, since this is not a business meeting, and I wonder if we could just go on ahead and proceed with the business that we have to do this afternoon?

Mr. WIGGINS. Could I make a comment before you cut it off, Mr.

Chairman? I have been a little bit disturbed from what I have heard in the last few minutes. Our responsibilities under the 25th amendment are different than our responsibility here. We are investigating an impeachment of the President of the United States, and we are not conducting an overview of his life from the moment he entered public service until now. Has there been any allegations or charges of misconduct with respect to the President's return for the year 1969?

Mr. DOAR. Yes.

Mr. WIGGINS. What, just in a general way, what are those?

Mr. DOAR. Well, the allegations involve the gift of his papers.

Mr. WIGGINS. Well now, can that properly, Mr. Chairman, be used as a springboard to investigate the total financial picture of a man under power of the impeachment process?

The CHAIRMAN. Well, I—

Mr. DOAR. Congressman, the purpose for which we are looking at the audit was to get the information relating to that subject particularly, and also to reconcile the IRS audit with the report filed by the joint committee. And it was not used as a springboard.

Mr. WIGGINS. Well, I hope it would not. I think we have to investigate the possibility of misconduct, but we cannot, in effect, file a blanket condemnation under the power of impeachment, and then go searching for evidence. That would be inappropriate, would it not?

Mr. DOAR. Well, there is no such intention.

Mr. WIGGINS. Well, I am pleased to hear that, and I hope that it would not be so.

Mr. DENNIS. Would the gentleman yield?

Mr. WIGGINS. I yield.

Mr. DENNIS. Is it not a fact that the IRS stated that they found no evidence of fraud on these same matters?

Mr. DOAR. That is a fact.

Mr. DENNIS. And the Mills committee stated that they made no determination on that subject whatever, as I remember. Isn't that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. Has counsel any reason to think that we are going to find something that those two bodies have not found?

Mr. DOAR. Well, I think that you should recognize that the IRS has referred to the Special Prosecutor for investigation certain questions with respect to the preparation of the President's 1969 income tax return. And I think that the information that is contained in the IRS, in the joint committee staff's report are matters which this committee has asked for, and we would intend to present to it. And in that connection, it was important for us because we could not get the IRS audit from the joint committee, to secure that audit and reconcile the differences, and see what initial investigation, if any, was made.

Mr. BROOKS. Mr. Chairman, I want to say that on the document itself, the resolution, I thought it was the understanding that the committee was going to try to make an effort to get the necessary authority from the House of Representatives to get the audit and the return. Now I see a resolution that is to the Secretary of the Treasury that is asking for the returns only, and does not mention the audit

specifically. And I do not think it necessarily includes them. I quite agree with Ms. Jordan, and I think that there is no reason why, if the President signed an Executive order to authorize the committee to get the returns on Justice Douglas, I do not think he necessarily will object to us getting the audit and getting the returns. And I think if you think we can get it, if they are going to change their ruling, and they are now going to let us have it, then we ought to ask for what we need, the returns and the audit, just that simply. And if they do not give it to us in a couple of days, we ought to go to the floor and get the authority to get it.

Now, I do not see—this is foolishness. Why are we writing and asking for only half of what we obviously need? And the audit may well prove, as the IRS statement itself did, that they found only technical fraud.

Mr. DOAR. Congressman Brooks—

Mr. BROOKS. Why not just ask for the audit and the return, and have it over with? They can send it to us or not.

Mr. DOAR. We tracked the language of the Executive order. It is our understanding that that material is going to be furnished to us after we file this resolution. If Commissioner Alexander would say after we sent this letter that we did not ask for the audit, and we would not get the audit, I would feel that I had not been fairly dealt with. I do not think—

Mr. BROOKS. Is it your opinion, Mr. Doar, that the audit is a part of the request as reflected by this language in paragraph 2 of this resolution?

Mr. DOAR. Yes; it is.

Mr. BROOKS. You just did not use the word "audit," but it is covered by the factual data and documents and memorandums?

Mr. DOAR. And report.

Mr. BROOKS. Reports, records.

Mr. DOAR. Yes, yes.

Mr. BROOKS. You feel that they will submit the audit and the returns?

Mr. DOAR. That is my understanding, both from Mr. St. Clair and from Commissioner Alexander.

Mr. BROOKS. Is that your understanding, Mr. Chairman, of the operation?

The CHAIRMAN. It is my understanding that if this request is not fully complied with that the committee can still act and go to the floor for a resolution. I would hope that it would be fully complied with and the audit would be made available.

Mr. BROOKS. So, let us run the gamble then. It is all right.

The CHAIRMAN. As I understand from Mr. Doar—

Mr. BROOKS. Nobody told us that until now.

The CHAIRMAN. Well, Mr. Doar was attempting to explain this.

Mr. DENNIS. Mr. Chairman?

Mr. BROOKS. I did not get that fact in the explanation.

Mr. DENNIS. May I inquire under my pending reservation? Why is it necessary to do anything if they are willing to give it to us? Why don't you just go around and ask them for it?

Mr. DOAR. Commissioner Alexander called me on Saturday and said,

well. Mr. Doar, you can get the materials you want now because the President has signed an Executive order. And then a little later on Saturday he said, well, I just forgot, somebody called my attention to what is a technicality, that we would like to have a resolution of the committee, in the language of the Executive order, so that we could get it for our files. And so, since I did not think there would be any difficulty in getting the resolution. I prepared it just as I thought that would be the most expeditious way to do it. Neither Mr. St. Clair nor I thought there would be any difficulty getting any material from the Treasury after the Executive order was signed. There is no provision in the statute that calls for this resolution.

The CHAIRMAN. All I would like to point out is that with this letter and this resolution, and there is no objection on the part of St. Clair, and Mr. Doar has merely explained, that he has discussed this with Mr. Alexander, and we would be getting information that is important to the committee, and that is why, however, despite the fact that I have not discussed this with Mr. Hutchinson, but he is now here, and I wonder whether or not Mr. Hutchinson would have any objection if I made the simple unanimous consent request that this resolution be adopted?

Mr. HUTCHINSON. Mr. Chairman, I will interpose no objection. As I understand the situation, the President has signed an Executive order, which under the statute will permit this information to be made available to the committee. I also understand that the regulations of the Department require that before they can comply that there has to be some kind of a resolution from the committee requesting it. And I also understand, Mr. Chairman, from the discussion here, that there is no opposition on the part of the President's counsel, and that the President is perfectly willing to turn over this information. As a matter of fact, he has issued the order authorizing it. So, I see no reason to object, and I construe this simply as a formality, and I will not object, Mr. Chairman.

Mr. DENNIS. Mr. Chairman, in view of the statement of the ranking member, I withdraw my reservation.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I want to point out, before we conclude on this matter, that we have not gotten a copy of the Executive order, have not seen the language. Does the committee have a copy of that, Mr. Doar?

Mr. DOAR. Right here.

Mr. BROOKS. Is it more than 30 pages long? But, it would have been nice if we had had a copy of that. And I might add, Mr. Chairman, that this order authorizes and directs the chairman of the committee or such agents as he may designate to inspect, et cetera. In no place does it point out that members of the committee will ever, other than yourself, not even Mr. Hutchinson, have any opportunity whatsoever to take a look at any of this, because the letter to Simon says in the second paragraph, "In accordance with the terms of the resolution," that you designate John Doar, and the subcommittee staff, or I mean the special committee staff, anybody that they designate or authorize, secretaries, lawyers, accountants, anybody they want. But, it never, I do not ever see where a Member of Congress, where we have any benefit whatsoever. Do we ever get to see it under this proposal?

The CHAIRMAN. Well, Mr. Brooks, I would like to advise that I think we are acting through counsel at this moment to inspect these documents initially. These documents would be then made available for the committee, and the committee is acting under this resolution. And I cannot see, frankly, where this is anything other than trying to expedite this proceeding so that we get this information and get it as quickly as possible, and do it through an orderly procedure of having the counsel designated by the Chair, and the counsel who has been designated by the committee to do so.

Mr. BROOKS. You think then that the documents will become a part of the regular documents that belong to the committee, are housed over in the Congressional Hotel, and will be a part of those documents received by the committee?

The CHAIRMAN. I think that the resolution provides for the inspection of these documents. And I am sure that once they have been turned over for this inspection, that that would occur as a consequence.

Mr. BROOKS. They would be then subject to House rules?

The CHAIRMAN. Well—

Mr. BROOKS. As all other committee information is?

The CHAIRMAN. May I inquire of Mr. Doar?

Mr. DOAR. Well, my understanding from the Commissioner is that this material was to be furnished to the committee, not to me, and that I was just—

The CHAIRMAN. I mean there was no restriction put on it?

Mr. BROOKS. There is no restriction intended in this as far as inspection?

Mr. DOAR. No; there is not, or copying.

Mr. BROOKS. All right.

Mr. HUTCHINSON. Will the chairman yield to me for a minute? It is my present understanding that while all of this material will be made available to the committee, that under the regulations of the Department, the IRS, that not all of the material could be made public, only such material as would become necessary or relevant as something to the committee's inquiry would be made public?

Mr. DOAR. That is correct. That is under the regulations of the committee.

The CHAIRMAN. I will ask unanimous consent that the resolution before the members be adopted. Any objection?

[No response.]

The CHAIRMAN. Is there objection?

[No response.]

The CHAIRMAN. No objection, and the resolution is adopted.

Mr. DOAR, you may proceed.

Mr. DOAR. Mr. Chairman, I would like to introduce to you today Gary Sutton, who is sitting next to me and behind, Mr. McKeithen, who works in the IRS investigation of the President's personal finances, and John Peterson, who is one of the committee staff sitting behind Dick Gill, and Robin Johansen. Mr. Sack has got the overall charge of agency practices, and Mr. Sutton is the principal attorney that has been preparing the matters in connection with the IRS investigation. And we will begin that presentation today with tab 1 of book 8.

Mr. SUTTON. On or about March 21, 1970, Special Counsel to the

President, Clark Mollenhoff, sent a memorandum to H. R. Haldeman transmitting material on the taxes of Gov. George Wallace's brother, Gerald Wallace. Mollenhoff has stated that he had been instructed by Haldeman to obtain a report from IRS on investigations relating to Gov. George Wallace and Gerald Wallace; that he had been assured by Haldeman that the report was to be obtained at the request of the President; that he obtained the report from the IRS; and that Mollenhoff did not give a copy of the report to anyone other than Haldeman or discuss the substance of it with anyone else until after the appearance of the articles.

On April 13, 1970, an article was published referring to confidential field reports, and IRS investigation of charges of corruption in the Wallace administration, and the activities of Gerald Wallace. Former Commissioner of Internal Revenue, Randolph Thrower, has stated that an IRS investigation concluded that the material had not been leaked by the IRS or the Treasury Department.

Thrower has stated that thereafter he and the IRS Chief Counsel met with Haldeman and Ehrlichman at the White House and discussed with them the seriousness of the leak and the fact that unauthorized disclosure of IRS information constituted a criminal act.

MR. DOAR. Our presentation in connection with this material will be slightly different in substance than prior presentations because there has not been any other investigation by a committee of Congress into all of the matters that we have looked into, nor has there been sworn testimony taken before committees of Congress in connection with those investigations that have been undertaken.

Therefore, parts of the statement of information and the annotations include affidavits that the staff has taken from various individuals.

We have also in connection with this material, also conducted some interviews, at least one for whom we have not taken an affidavit, and that was with former Secretary Shultz of the Treasury Department.

Finally, this material leads up in one of the later paragraphs to a conversation on the 15th of September between the President and John Dean. The committee members may remember, or will remember, that we had that part of the conversation from 5:27 to 6 o'clock, but that the President and John Dean continued to confer to 6:17. And we feel that in order to complete this investigation that it would be necessary for us to obtain that material, that recording.

That recording at the present time is in the possession of Judge Sirica, and I mention that because as we develop the material, there will be materials furnished as to what Judge Sirica found with respect to that recording after he listened to it at the request of the Special Prosecutor, who is also conducting an investigation into the alleged irregularities with respect to the practices engaged in by the White House in connection with the IRS.

MR. HOGAN. Mr. Chairman?

THE CHAIRMAN. Mr. Hogan.

MR. HOGAN. On that tab on line 10, it says until after the appearance of the article. Is that the article referred to in the next sentence?

MR. DOAR. That is correct.

MR. HOGAN. It speaks as if it was—

Mr. DOAR. Yes; it is.

Mr. HOGAN. That is the Jack Anderson article?

Mr. DOAR. That is right.

Mr. HOGAN. Thank you.

Mr. DOAR. Tab 1.1 is a memorandum from Mr. Mollenhoff to Mr. Haldeman dated March 21, 1970, in which he encloses, he delivers to Mr. Haldeman the material on the Gerald Wallace tax matter. And he indicates that, as Mr. Haldeman can tell from the attachment, that it is a large case. And in the second paragraph he indicates that, "While the investigation is not conclusive, it would appear that there is a possibility of a rather large criminal case."

And he recommends to "let the matter mature a bit." And he suggests that there might be some advantage in having the Commissioner ask for one or more tax returns.

Tab 1.2 is the copy of the article that appeared in the Washington Post, the Jack Anderson article, dated Monday, April 13, 1970, in which Mr. Anderson reports that a special task force of IRS agents moved into Alabama to investigate charges of corruption in the administration of former Gov. George Wallace.

Tab 1.3 is Mr. Mollenhoff's affidavit to the effect that he was appointed Special Counsel to the President in July 1969 and remained there for 11 months when he resigned. And one of his responsibilities included the investigation of allegations of corruption or mismanagement, and, therefore, he had authority from the President to periodically obtain certain tax returns from the IRS. He relates that he got his instructions to obtain a report from the IRS in early 1970 from Mr. Haldeman relating to the alleged illegal campaign contributions to the 1968 Presidential campaign of George Wallace, and unreported income received by his brother. And he goes on to say that he made the request, and that on March 20 he received a report on the investigation from assistant IRS Commissioner, Donald Bacon. On the following day he delivered the report to Mr. Haldeman on his assurance that it was for the President. He said he did not give a copy of the report to anyone else until after the appearance of the column.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Mr. Doar, I notice that Mr. Mollenhoff adds the word "substance," did not discuss the substance of the report with anyone. Did you inquire as to who he did discuss it with? And if it did, in fact, involve the commission of a crime, as the Tax Commissioner stated in later paragraphs, would it not be of interest to you?

Mr. DOAR. I did not conduct the interview with him.

Mr. COHEN. As I understand it, in a subsequent paragraph the Tax Commissioner gets very concerned about the fact that there has been disclosure of this memorandum that involves a violation of criminal law, and it seems to me that this affidavit was prepared on behalf of Mr. Mollenhoff in which he amended it to include the words "in substance" and it seems to me you would want to inquire as to what was, in fact, disclosed prior to the Jack Anderson article, and to whom.

Mr. SUTTON. I believe Mr. Mollenhoff's reason for inserting that was simply that he did not remember, that he may have simply mentioned to someone else in the White House the fact that he had re-

ceived a report. But, he did not discuss the nature of it, the substance of it, or anything further related to it.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. It said here in paragraph 4 of the Mollenhoff affidavit: "Initially I questioned Mr. Haldeman's instruction, but upon his assurance that the report was to be obtained at the request of the President." Do we know in the interview the reasons for questioning Mr. Haldeman's instructions, because here we have got a questioning process going on, and then a direct tie to the President. Can you give us a little fill-in as to why, as to some of the reasons for the language?

Mr. SUTTON. I believe it was only to ascertain definitely that it was for, or that Mr. Haldeman was instructing him to specifically obtain it for the President.

Mr. MEZVINSKY. He was not questioning—I mean, was he questioning Mr. Haldeman's right to request that material? Is there a legal or a statutory kind of prohibition? Does it have to specifically come from the President?

Mr. DOAR. Well, that is explained in the next affidavit of Mr. Thrower, and I think if we could turn to that——

Mr. MEZVINSKY. OK. That is fine.

Mr. DOAR. If you look at the bottom of the page, Mr. Thrower, who at that time was the Commissioner of IRS, said that as he recalled it, "Mr. Mollenhoff advised me that the report on the Wallace campaign was desired by and on behalf of the President, and in connection with his official responsibilities. In earlier discussions over the disclosure of confidential information in the possession of the IRS, Mr. Mollenhoff and I had reached an understanding that this would constitute a legal justification for the disclosure." So that as I understand it, from having talked to Mr. Sutton about it, before that Mr. Mollenhoff was just, was following up to be certain this complied to the procedure he had agreed to with Mr. Thrower, and there was that kind of a requirement before documents could be released to the White House staff.

Mr. SUTTON. That is correct.

Mr. FLOWERS. Inasmuch as my Governor is involved here, I thought I should say a word.

I remember this occasion very clearly in April 1970; this time of the year is not a significant date to many of you, because this is not your primary times. Let me assure you that in April 1970, Gov. George Wallace was fighting for his political life in a primary campaign against then Gov. Albert Brewer. The primary election took place on the first Tuesday in May. The timeliness of this Jack Anderson article was important, and it had a rather devastating effect and I think nearly beat Governor Wallace in the primary campaign in 1970. I know that the Wallace people—not just his brother, but everybody who supported him—were terribly disturbed about the leak on this matter and what it did politically.

Mr. McCLORY. Mr. Chairman, may I just inquire?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. The affidavit of Mr. Thrower was taken down there and who took the—did one of our staff take the affidavit down there?

Mr. SUTTON. Mr. Thrower took the affidavit himself.

Mr. McCLORY. Did he communicate with him?

Mr. SUTTON. We interviewed Mr. Thrower when he was in Washington on business and requested that he prepare an affidavit himself.

Mr. McCLORY. Did we ask him—he mentions in the affidavit that he is just doing this in accordance with his best recollection; he does not have any files or anything like that upon which to base his recollection. And of course, he is vague on the date, which is entirely understandable. He does not have any supporting material, I judge, in his possession, is that right?

Mr. SUTTON. That is as I understand, yes.

Mr. FLOWERS. Mr. Chairman, this is also the campaign in which the \$400,000 Kalmbach money went to the Alabama campaign to Wallace's opponent, the Brewer campaign.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. If you look at the second paragraph of Mr. Thrower's affidavit, you will see that he describes a so-called sensitive case report. He says that for many years reports on the status of sensitive cases within the IRS had been given a very limited and controlled distribution within the Commissioner's staff and a copy had customarily been sent by special courier to the Secretary of the Treasury.

Mr. Thrower goes on to say:

I understand that customarily the Secretary of the Treasury would advise the President of any matters in the sensitive case report about which the President, by reason of his official duties and responsibilities, should be advised.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Do we know who initiated this sensitive field examination that the IRS was conducting into the 1969 campaign of Governor Wallace? Was this done at the instigation of the White House?

Mr. DOAR. Our understanding is that it came up through the regular IRS channels.

Ms. HOLTZMAN. Thank you.

Mr. DOAR. In the second and third page of the affidavit, Mr. Thrower goes on to set forth his dismay about the fact that this material did get into Jack Anderson's column and how he had asked Mr. Acree, the Assistant Commissioner-Inspector to make an investigation to see whether or not the disclosure had occurred within the IRS or the Treasury Department and whether or not the memorandum which had gone to Mr. Mollenhoff was clearly the source of the Jack Anderson column. Mr. Acree redetermined, after his investigation, that first, the Thrower memorandum was the source of the column; and second, that the leak had not occurred within the Treasury or within the IRS.

So then Mr. Thrower called Mr. Mollenhoff and objected strenuously to him about the fact that this was, had leaked. If you see down at the five lines at the bottom of the page, he says:

Thereupon, I called Mr. Mollenhoff who, before I could state my complaint, announced that he knew that I was calling about and wanted to assure me that he had not breached the operating procedures which he and I had developed and that he was in no way responsible for the leak. I told him that while it was a very serious breach of the laws against disclosure, I had felt confident that he was not responsible.

He goes on to say that he was greatly disturbed and he said that Mr. Mollenhoff gave him the impression that the leak had occurred either through Mr. Haldeman or possibly Mr. Haldeman or Mr. Ehrlichman and that thereafter, Mr. Thrower telephoned Mr. Ehrlichman and asked if he could have a meeting with him and Mr. Haldeman. Which he did arrange, which was attended by the Chief Counsel of the IRS, Mr. Worthy. At that time, they reviewed with Mr. Haldeman and Mr. Ehrlichman the seriousness of the leak and the fact that an unauthorized disclosure constituted a criminal act.

He said Mr. Haldeman and Mr. Ehrlichman, while they did not indicate that they had any knowledge of the source of the leak, did take our complaint seriously and assured us that they would cooperate in undertaking to prevent such incidents in the future and would call the gravity of the situation to the attention of those in the White House who might from time to time have access to such information.

Mr. JENNER. As to the handling of sensitive case procedures, we interviewed Mr. Walters, who had succeeded Mr. Thrower as Commissioner, and he confirmed the sensitive case practice as reported in paragraph 1 and the supporting tabs.

I do wish also to call your attention to the fact that under the 1.3 tab—that is Mr. Mollenhoff's affidavit—you will notice he states that Mr. Haldeman, Mr. Ehrlichman, and Mr. Ziegler accused him of leaking the information. He says in his affidavit that he denies this and he continues to deny it.

Mr. SEIBERLING. What tab is that?

Mr. JENNER. Tab 1.3. That is paragraph numbered 7 at the top of the second page: "I denied having done so and told them that the only copy of the report had gone to Mr. Haldeman."

As Mr. Doar has brought out, at paragraph 2 of Mr. Mollenhoff's affidavit—that is the first page—he states affirmatively that he had the authority from the President to obtain the information from the IRS. Mr. Doar has called your attention to the paragraph at the bottom of the first page.

I think that is all I wish to supplement.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Has anyone asked Haldeman or Jack Anderson about this? This to me is a very, very serious matter and could very well be an impeachable offense.

Has anybody tried to get from Jack Anderson the identity of the leaker and has anyone asked Haldeman whether or not the President might have been involved in a conspiracy to leak this information?

Mr. DOAR. We have not.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I did not understand, just for clarification, what is the precise law? Did not the President have the authority to delegate to Mollenhoff the right to examine returns and to receive reports from Thrower? Was there any violation of any law at that moment?

Mr. DOAR. My understanding is that there is no violation of the law in doing that. Mr. Thrower and Mr. Mollenhoff worked out this arrangement that was consistent with the statute and the regulations.

Mr. WALDIE. So that any violation of any law would have occurred after the materials were given to the President or to Mollenhoff?

Mr. DOAR. That is correct.

Mr. LATTI. Mr. Chairman, I do not think that we ought to let that record stand that way.

What you are saying is that this man Mollenhoff that just raised Cain with Mr. Kissinger—is not he the one from Iowa or someplace out there that is now reporting? Is he the man?

Mr. DOAR. He is the man.

Mr. LATTI. So what you are saying to the gentleman from California is you are going to take his testimony as the gospel truth and we are going to put all the blame on the White House? Is that what you are saying? I do not buy that.

Mr. DOAR. I did not say that.

Mr. LATTI. I understood that to be what you said.

Mr. DOAR. I understood the question to be whether or not the procedure which Mr. Thrower and Mr. Mollenhoff had worked out with respect to the delivery of the report to Mr. Mollenhoff was in accordance with the statute and regulations.

Mr. LATTI. That is not what I had reference to.

I would like to have the court reporter read back the question that was propounded by the gentleman from California and the answer by Mr. Doar.

[Question and answer read.]

Mr. LATTI. That is the question and I object to the answer.

Mr. SEIBERLING. So he has objected.

The CHAIRMAN. It is a fact—the objection is noted, if the gentleman wants to have the objection noted in the record.

Mr. LATTI. If the chairman will let me pursue it just one step further, however, what the answer was, it conveyed the impression very forthrightly that we are going to take Mr. Mollenhoff's word and we are going to say that he did not lie, he did not pass the information on, and point the finger directly at the White House. I am not one who is going to take his word for anything.

Mr. DOAR. Mr. Chairman, that is not the impression I intended to make.

Mr. WALDIE. That is not the impression I got from the answer.

Mr. LATTI. That is enough for me.

Mr. WALDIE. That is not the impression I meant to convey. I think Mr. Latta ought to move up to the center of the committee where he can hear better.

Mr. LATTI. I heard that too well.

The CHAIRMAN. I think Mr. Doar ought to proceed.

Mr. DOAR. Paragraph 2, please.

Mr. SUTTON. On September 21, 1970, White House Aide Tom Charles Huston sent a memorandum to Haldeman transmitting a report on an investigation by the IRS special service group of political activities of tax-exempt organizations. Huston discussed administrative action against the organizations and stated that valuable intelligence-type information could be turned up by IRS as a result of their field audits.

Mr. DOAR. Tab 2.1 is the memorandum of Tom Charles Huston, who

is the same Tom Huston that participated in the Huston plan that we went through with the committee several days ago. This memorandum is dated September 21, 1970. I want to call the committee's attention to the second and third paragraphs of that memorandum:

Nearly 18 months ago, the President indicated a desire for IRS to move against leftist organizations taking advantage of tax shelters. I am pressing IRS since that time to no avail.

What we cannot do in a courtroom via criminal prosecutions to curtail the activities of some of these groups, IRS could do by administrative action. Moreover, valuable intelligence-type information could be turned up by IRS as a result of their field audits.

MR. SEIBERLING. What about the first paragraph?

THE CHAIRMAN. That is there for you to read. It is pertinent.

MR. SEIBERLING. I am referring to the phrase "to monitor the activities of ideological organizations." It seems to me that is part of the picture.

MR. JENNER. Mr. Chairman, as Mr. Doar has said, this is the same Tom Huston to which reference was made earlier in the presentation. But in the Huston plan memorandum, he did make the suggestion at that time that the IRS move against leftist organizations.

MR. SARBANES. Mr. Chairman?

THE CHAIRMAN. Mr. Sarbanes.

MR. SARBANES. What was Huston's position in the White House staff? Do we know that?

MR. DOAR. He was a deputy counsel. I think that would mean that he would be reportable to, first, Mr. Ehrlichman, and then later, Mr. Dean or Mr. Ehrlichman.

MR. SEIBERLING. Could I ask one other question, Mr. Chairman, just as a point of information?

THE CHAIRMAN. Mr. Seiberling.

MR. SEIBERLING. Is this special service group some group in the IRS that had a permanent standing? Or do we know the answer to that question?

MR. SUTTON. The group was organized in, I believe, August 1969. That information may be contained in the report which is also a part of this exhibit from Commissioner Thrower. The group remained in existence until sometime last year. I believe until August 1973, at which time, Commissioner Alexander decided it was no longer necessary.

THE CHAIRMAN. The report on that group occurs on the following page.

MR. JENNER. Mr. Chairman, that subject matter Mr. Seiberling has discussed is in the memorandum at tab 2.1, printed page 1342, about half way down, or a little more than half way down.

MR. McCLORY. May I ask this question on the law? There is nothing wrong with employing the tax laws or investigating utilization of the tax laws, whether it is by a leftist or a rightist, or whatever organizations, if they were being misused or illegally used as, as it says, tax shelters or tax exemption, if they were actually politically oriented organizations, is there?

MR. DOAR. No; it would be quite proper.

MR. JENNER. That is right.

MR. SEIBERLING. If I could respond to that, though, there is plenty

wrong if you just select certain groups for political or ideological reasons and do not investigate others.

Mr. McCLODY. Oh, is there? You say it is all right just to investigate rightists and not leftists?

Mr. SEIBERLING. No; I am just saying—

Mr. McCLODY. I think you ought to be indiscriminate, perhaps, but whether you attack left or right or both sides, it is proper to do that, if in fact the rightist or leftist groups are in violation of the law.

Mr. SEIBERLING. Well, unless—

The CHAIRMAN. I think counsel has answered the question. I guess we can proceed.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Also I wish to say that when we interviewed Secretary Shultz, Secretary Shultz confirmed Mr. Thrower's report and the report we received from Mr. Walters that it was customary for the Secretary to call to the President's attention the matters in the special reports that he would receive from time to time from the Department.

On the subject matter raised by the gentleman from Illinois, it would be helpful, I think, to all of you if you would glance at printed page No. 1341 of tab 2.1.

Mr. DOAR. Tab No. 3.

Mr. SUTTON. Former Commissioner of Internal Revenue Thrower has stated that during the summer of 1970, he was advised by Under Secretary of the Treasury Charles Walker that John Caulfield, head of security for the President's office, was interested in the position of Director of the IRS Alcohol, Tobacco, and Firearms Division—ATF—and had the President's blessing and the support of top people at the White House. Thrower concluded that Caulfield was not qualified for the position. Thrower has stated that in November 1970 he was told by Walker that the White House wanted Caulfield to be considered for the position of Chief of the Enforcement Branch of ATF and that the White House wanted to take the Enforcement Branch out of ATF and have it report directly to Thrower rather than through the chain of command.

Thrower has stated that he told Walker that Thrower would resign if Caulfield were appointed and the organizational changes were required. Thrower has stated that shortly thereafter, he was advised that the White House would drop the matter.

Mr. DOAR. Tab 3.1 is another affidavit of Randolph Thrower with respect to this position of Director of the ATF Division of IRS and the efforts by the White House to have John Caulfield, who at that time was working, I believe, for Mr. Ehrlichman, made Director—as has been the information we furnished to you on this and other matters connected with this inquiry. He then relates the organization of this operation and the fact that he did not think Mr. Caulfield was qualified.

If you will look at page 2 of Mr. Thrower's affidavit, in the third paragraph, Mr. Thrower also says that—

A short time later, Dr. Walker called to advise me that Mr. Gordon Liddy, then in the office of the Assistant Secretary of the Treasury for Enforcement and Operations, was interested in the position as Director of ATF.

Mr. Thrower suggested to Mr. Walker that Mr. Liddy was in his department and that he should handle this one.

In the next page of the affidavit, Mr. Walker has advised that the White House reconsidered the offer to make Mr. Caulfield Chief of the Enforcement Branch of ATF and he was interested in that position. They had suggested that the Enforcement Branch of the ATF be taken out of the chain of command and have it report directly to the Director of the Internal Revenue.

Mr. Thrower indicates why, as a matter of administration, he objected to this. These objections are itemized in paragraphs 1 through 5 contained on page 3 of his affidavit.

On the next page, Mr. Walker advised that they had decided to drop this matter of pressing for Caulfield's appointment.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Is the purpose of tab 3 simply to demonstrate the White House interest in the personnel of IRS and the ability of the IRS Commissioner to turn down, resist these pressures?

Mr. DOAR. And also the efforts of the White House to attempt to reorganize the IRS in a way where the White House would have more control over certain of the activities, enforcement activities, of IRS.

Mr. FISH. Thank you.

Mr. JENNER. I think it might be helpful to review some of the comments that have been made if I might say to you that Randolph Thrower has a very high reputation among the members of the bar of this country as not only a man of ability in this area, in the tax area, but as an administrator and also as a highly reputable lawyer.

It might also be helpful to the committee for me to point out that Mr. Thrower states in his affidavit on the first and fourth pages that substantially all of his contacts on this matter were through the Under Secretary of the Treasury, Mr. Walker, although he also states in his affidavit that he may have phoned the White House. But he states that he does not specifically recall those conversations.

Mr. DOAR. Tab No. 4.

Mr. SUTTON. Thrower has stated that in January 1971, having decided to submit his resignation as Commissioner of Internal Revenue, he attempted unsuccessfully through Treasury Secretary Kennedy and Attorney General Mitchell to arrange a meeting with the President to express his concern that any suggestion of the introduction of political influence into the IRS would be very damaging to the President and his administration as well as to the revenue system and the general public interest. Thrower has stated that he was told by the President's appointment Secretary Dwight Chapin, that the President had received Thrower's views from the Attorney General and did not feel a conference was necessary. Thrower thereupon submitted his resignation.

Mr. DOAR. This information is contained in the same affidavit that was behind tab 3, although it is on pages 4 and 5 within the brackets there at the bottom of the page with respect to the events that took place in January 1971 with respect to his resignation.

Mr. McCLORY. Mr. Chairman, may I inquire of counsel, have we contacted either former Attorney General Mitchell or former Secre-

tary of the Treasury Kennedy for corroborative support for the matter in the affidavit? Mr. Kennedy—I think he is in private life now in Chicago, is he not?

Mr. SUTTON. No, we did not.

Mr. McCLORY. You have not communicated with him at all?

Mr. SUTTON. We talked to former Under Secretary of the Treasury, Charls Walker, who confirmed the other portions of Mr. Thrower's affidavit.

Mr. WIGGINS. Mr. Chairman, before we go on——

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Tab 5 starts a new subject, and I have been wrestling with the significance of all of this. I take it that the significance of the last tab was possibly some implication that there was an attempt to politicize IRS. Mr. Thrower in his affidavit indicates that it would be unwise to interject politics into the IRS. But do we have any affirmative evidence on the subject? Was there an attempt to introduce political considerations into the IRS? If so, could you call my attention to them?

Mr. DOAR. Well, in the overall presentation, there are two matters of information that we called the attention of the committee about. One is that the attempt or allegations—allegations involving attempts by the White House to influence the kind of persons that were audited by the IRS.

Mr. WIGGINS. That comes later, I guess?

Mr. DOAR. Yes.

Mr. WIGGINS. All right.

Mr. DOAR. The other is attempts by the White House—allegations of attempts by the White House to get information from the IRS for purposes other than supervision of the enforcement of the tax laws.

Mr. WIGGINS. I see.

Mr. DOAR. Now, these paragraphs, each one standing alone—Congressman Wiggins, I can understand your concern about just what is the pertinence of this particular matter, but I think that Mr. Jenner and I reviewed these carefully and it is our opinion that if you take all of the paragraphs together, together with some other information that we have, you get as good a picture as we can give you with respect to these allegations. I am not suggesting one way or the other what your conclusion is on that.

Mr. WIGGINS. That is the general thrust of the whole book, though, the allegation of improper influence by the President or his subordinates on these executive agencies?

Mr. DOAR. Yes; in two ways: One in directing that A, B, C, rather than X, Y, Z, be audited—selective auditing—or by getting information from IRS that is contained on taxpayer's returns and using it for other purposes.

Mr. WIGGINS. All right. I will keep that in mind as we listen to the evidence.

Mr. DOAR. Tab No. 5.

Mr. SUTTON. From June 24, 1971, through June 1972, members of Colson's staff circulated to various White House staff members names for and deletions from a list of political opponents. Dean has testified that the list was continually being updated, and the file was

several inches thick. Colson has stated that the list maintained by George Bell of his office was primarily intended for the use of the social office and the personnel office in considering White House invitations and appointments.

Mr. Doar. When John Dean testified before the Senate select committee, he had a number of documents with him and he furnished to the Senate select committee a number of documents relating to lists of persons that were contained in his file when he left the White House. Some of these documents are contained in the backup material behind tab No. 5.

Tab 5.2 is a memorandum from George Bell dated June 24, 1971, which, at page 1693, reads: "Attached is the list of opponents which we have compiled. I thought it would be useful to you from time to time."

Then you see the list and there are a number of checkmarks on the right-hand side of that, the first two pages of that memorandum.

I think if I could ask you to turn forward to tab No. 8. Tab 8.2—this is a memorandum from Mr. Colson to Mr. Dean and it has attached to it the June 24 memorandum from Mr. Bell, in which he says:

I have checked in blue those to whom I would give top priority. You might want to check someone else although I think you will find this is a pretty good list. Right on.

At tab No. 8, the entire Bell document, including the list of the 21 people, with the 10 checkmarks, is attached and that is the same or a copy of the list which is attached to 5.2.

Then on the following day, at 5.3, there is a memorandum from Joanne Gordon, which attaches a list of Muskie contributors. This is quite a long list of persons.

Mr. McCLORY. Mr. Chairman, I never understood why this was ever relevant to the inquiry that they carried on in the other body. I am frankly appalled that it is considered to be relevant to our inquiry. I would hope that there would be some appropriate tie-in between any of the individuals named and actions by or in behalf of the President in the misuse of the agency. Otherwise, I think it is so highly inappropriate and scandalous that we should not have it before us and we should not give any more publicity to this kind of thing at all.

Mr. Doar. Congressman, I want to make the point that, as I told Congressman Wiggins, there are two allegations: One, that there was political misuse of the IRS by the White House, by the Nixon administration, with respect to getting the IRS to audit certain individuals; and with respect to the material here, there is material that suggests that certain people were identified by the White House for audit. As far as we can tell, the result of that on IRS was negligible. I mean that is what the finding has been of the committee, the Joint Committee on Internal Revenue Taxation. But these allegations have been made and we were bringing the information to you for such use as you might want to make of it.

Mr. McCLORY. In other words, what you are saying is that there is a negative finding with regard to utilization of IRS or other agencies as far as trying to get these individuals who were named on the opponents list, as it is called.

Mr. Doar. It is not negative with respect to attempts, but negative with respect to results.

Mr. McCLODY. Are we going to have evidence here that this opponents list was actually used in connection with attacks made through the use of agencies? If not, I think it is completely irrelevant.

The CHAIRMAN. I cannot say that it is irrelevant. I think that the material that is here is perfectly relevant to the inquiry. There are two phases of this that we are inquiring into, the misuse of the IRS for certain purposes other than the purpose for which the agency is to be used and the fact that there is a political opponents list. And we do know that during the course of our listening to conversations, there were direct references made to these lists and to the use of such. Whether we use them one way or another or conclude one way or another is irrelevant.

Mr. McCLODY. Mr. Chairman, actually, you did not let counsel answer my question, because I think the answer would have indicated that there is no relevance. We have on the one hand an opponents list; on the other hand, you have a memorandum indicating that we should utilize the IRS, but there is no showing that the IRS was used with respect to this precise list. That is why I think these things are not related at all.

Mr. SARBANES. If the gentleman would yield, you can try to get me to do a wrong thing. I may not do the wrong thing and that absolves me. It does not necessarily absolve you if you were diligent in your efforts to get me to do the wrong thing.

Mr. DENNIS. Would the gentleman from Illinois yield?

Mr. McCLODY. Yes; I am happy to yield.

Mr. DENNIS. I thank my friend for yielding.

I think the point the gentleman from Illinois has made is a valid point. The question is what evidence, if any, is there of an attempt, as the gentleman from Maryland says, to have audits made of people on the enemies' list or of people on the Muskie list? They become relevant if there is evidence of an effort on those people and that is Mr. McCloDY's question.

Mr. McCLODY. Precisely.

Mr. DOAR. We do have some evidence to present to the committee on that.

Mr. HUNGATE. Mr. Chairman, I have a question, please.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I notice on tab 5.3, page 1751, Clark Clifford and Averill Harriman, but I do not have any money beside them. Did they make it for nothing? It is at the bottom of the page.

Mr. SEIBERLING. Mr. Chairman, just to clarify the previous point, in conformity with standard practice where you have cases involving parties and issues, what I understand you are doing is simply putting this evidence before us subject to connection in the end. Is that not what you are doing?

Mr. DOAR. That is right, and we would not put something before you where there was not evidence of a connection or something which would lead one way or the other. The committee has made it very clear that we are not to draw conclusions and we are not to select the evidence, that these allegations are to be presented to you in as neutral and with as much information as we can.

I might—some of this information you might decide has no perti-

nence, but that would be your decision. But there is nothing about this—we would not put in a paragraph to mislead you.

Mr. McCLORY. My criticism is not—I do not discriminate as far as my criticism is concerned. I criticize the President for making public the 42 tapes because I think he did damage to a lot of people by doing that. And I think by republishing this opponents' list, I think we do damage to a lot of people that we should not do, because I think it is irrelevant to our inquiry.

Mr. DOAR. I would hope that before the committee would publish this material, it would make a decision as to the relevance and conclude not to publish it.

Mr. McCLORY. I would hope so, too.

Mr. HUNGATE. Counsel, I did not get an answer to my question, or was there an answer and I did not hear it?

Mr. DOAR. I do not know the answer.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Jenner has a comment.

Well, the other lists here are a series of lists that were filed until you get to 5.2. Then Mr. Colson writes to the committee, where he says the committee was misled with respect to the so-called opponents lists and that these lists that Mr. Bell has maintained were broad general lists of critics and supporters of the President and that the lists were primarily intended for the use of the social office and the personnel office in considering White House invitations and appointments.

He said that it was the practice of the White House to keep a list so that they would have an idea within the White House of critics and supporters of the President. He makes a very specific point about that and he says in the next page:

By confusing the list of 20 names with Mr. Bell's overall list, Mr. Dean has very unfairly implicated Mr. Bell in something I suspect Mr. Bell was totally unaware of—

And Mr. Colson's point, if I am right, means that there was a list of 20 in tab 8 and that had no relationship to the other lists found in 3, 4, 5, 6, 7, and so forth.

That is all I have.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Whether you characterize it as does Mr. Colson, who makes a logical presentation, the fact is that the enemies list, or however you might designate it, was widely circulated throughout the White House. I direct your attention to the sub-tabs of those to whom these lists were circulated. If you will just make a note of the tab numbers—it may take too much time to look at each one. Tab 5.3, numbered page 1734; 5.4, numbered page 1691, on which, among others included, is Mr. Strachan. Tab 5.5, numbered page 1725; 5.7, numbered page 1727; and 5.8, numbered page 1705. That will give you some very good notions of the breadth of distribution throughout the White House.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Then, counsel, it might appear, then, from tab 5.12—that is Mr. Colson's letter—that this list is primarily, after the first.

21 people, primarily intended for the use of the social office and the personnel office in considering White House invitations and appointments, so that referring back to an opponents list in tab 5.3, page 1736, Mr. Cyril Clements of the Mark Twain Journal at Kirkwood, Mo., that would be so they would be sure not to ask him for lunch.

Mr. JENNER. Mr. Chairman, it might be well also for the committee to have in mind that Mr. Doar has said that later on we will read some other specifics. There will be in the next book, tab 22, Mr. Dean delivering an enemies list to Mr. Walters when he was Commissioner and that Mr. Walters put the list in his safe and did not circulate it.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. As I understand it, the reason we are going through these names is because subsequently, we will supposedly see whether or not the IRS was used. Do we also proceed to take a look at the use of the IRS with friends of the White House? Is that later on in the book as well?

Mr. DOAR. Yes.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. At this point, I would like to inquire how long we are going to proceed today. Will we finish with this book and then—

The CHAIRMAN. We are not going to finish this book at all. We are going to recess in 7 minutes.

Mr. DOAR. Tab No. 6.

Mr. SUTTON. On July 20, 1971, John Dean wrote a memorandum to Ehrlichman's aide, Egil Krogh, attaching information compiled by John Caulfield regarding the Brookings Institution's tax returns and noting that Brookings received a number of large Government contracts. Caulfield has testified that it was his impression that this was public information.

On July 27, 1971, Dean sent a memorandum to Krogh to which was attached a carbon copy of Dean's July 20, 1971, memorandum on which the words "receives a number of large Government contracts" were underscored and a marginal note by Haldeman stated that these should be turned off. Dean's July 27, 1971, memorandum stated that he assumed that Krogh was turning off the spigot.

Mr. DOAR. Tab 6.1 is Mr. Dean's memorandum of July 20 and in the first paragraph he refers to the fact that:

Chuck Colson has made some efforts to determine what Brookings is up to but I don't think he has produced any solid evidence of the nature of this publication.

Then he said:

I requested that Caulfield obtain the tax returns of the Brookings Institute to determine if there is anything that we might do by way of turning off money or dealing with principals of the Brookings Institute to determine what they are doing and deal with anything that might be adverse to the administration.

Then there is an attachment there setting forth some information about the Brookings Institution. Then at tab 6.2—

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Who wrote this memorandum that is undated, unsigned, and undirected? It illustrates all the points that have been discussed here—namely, using Commissioner Walters on page 4 of this memorandum “Commissioner Walters * * * has not yet exercised the firm leadership expected at the time of his appointment. Additionally, there appears to be a reluctance on his part to make discreet politically oriented decisions.” And so on. It does not say whether he wrote it or Dean wrote it and it is very relevant.

Mr. DOAR. Mr. Caulfield wrote it and at that time, he was employed by Mr. Ehrlichman. His testimony is at tab 6.3, page 3435.

Mr. DRINAN. I have that, but will there be any follow-up testimony on this particular memo? Has Mr. Haldeman testified to this? He initialed it and said it was a good idea. Has he given any further testimony?

Mr. DOAR. No; he has not.

Mr. DRINAN. Thank you.

Mr. DOAR. At 6.2 is Bud Krogh's testimony. That was at the same time that the SALT leaks were occurring, just to refresh the committee's memory, and Krogh and Young were organizing the Plumbers. If you will recall, the Pentagon papers were released on the 15th of June and Hunt was hired on the 7th of July and Krogh and Young were put in charge of this unit around the 24th of July. Prior to that time, Krogh worked for Mr. Ehrlichman and Young worked for the National Security Council.

The second memorandum there is the copy of Dean's memorandum to Krogh of July 20 and Mr. Haldeman's notes on the side of the memo, “these should be turned off,” with the initial “H.”

Mr. SEIBERLING. I am a little lost.

Mr. DOAR. It is 6.2, a copy of the memorandum of 6.1, and it refers back to the attached memo about the Brookings Institute that Father Drinan referred to that had been written by Mr. Caulfield.

Mr. DANIELSON. Mr. Chairman, for clarification, I am a little lost on 6.1 and 6.2.

Attached to 6.1 is this many-paged document saying “Retyped from indistinct original.” Ordinarily, you have the indistinct original appended somewhere and I am kind of lost.

Mr. DOAR. It is right there, Congressman. If you split that many-paged memo in half, you will find the second half is the indistinct original.

That is the testimony by Caulfield. His testimony is at 6.3, within the brackets.

Mr. MEZVINSKY. Mr. Doar, have we communicated or talked to any former IRS Commissioners whether or not these practices that we are looking into were considered at all by previous administrations?

Mr. DOAR. We talked to just Mr. Walters and Mr. Thrower.

Mr. MEZVINSKY. Just those two? Do we know from—

Mr. DOAR. We did have a conversation with Mr. Caplin, but we did not interview him for just that purpose. We did not keep notes of the interview.

Mr. MEZVINSKY. Can I understand the reasons why we did not, since we are looking at activities of the administration regarding this kind of activity, why we did not try to communicate with anyone prior to this administration regarding this kind of activity?

Mr. DOAR. We did not have any information that suggested that there was anything, so we did not inquire into it. Perhaps we should have.

The CHAIRMAN. I do not know that it really is necessary. One might, if he wants to find out, but I think the question is what we are looking into here, the allegations that are made. However, if the gentleman is looking for that information, I am sure he can secure it.

The committee is going to recess until 9:30 tomorrow morning.

Mr. FISH. Mr. Chairman, may I clear up this matter that I raised before?

It is my understanding that your previous statement, Mr. Doar, said that the photograph of a document on the front page of the New York Times was not that of a particular document in the possession of the committee or this committee's staff.

The CHAIRMAN. That is correct.

Mr. FISH. I refer you to the final edition of today's Washington Post on page A4, which has a photograph of a different letter, one marked "top secret" and signed by J. Edgar Hoover, dated May 13, 1970, whereas I remember your letter in the New York Times was dated in 1973. This is clearly a different document. I wonder if the same statement could be flatly made that this did not come from the committee or the committee's staff?

Mr. DOAR. No, that document did come from the material furnished to this committee. We do not know where it came from, but it came from the material that was in the notebook.

Mr. FISH. It cannot be distinguished from something available to the committee and the staff, in other words?

Mr. DOAR. No, it cannot.

Mr. FISH. Thank you very much.

Mr. RANGEL. Mr. Chairman, just on this question, you made an earlier statement that you know that material has been leaked from members of the committee. I did not know whether you had any basis for that. Then I hear Mr. Doar saying that what Congressman Fish was talking about did come from the notebook and there is an inference that we are the members with the notebooks and I assume that the material is someplace else before it gets into a notebook.

I do not know whether there has been any proof and I would like, of course, to have proof as to where the leaks are coming from. It is just that you made a flat statement that you know it has come from members and there are a lot of other people involved in this than members and some not even involved with the legislative branch.

The CHAIRMAN. Well, I referred to articles that have appeared which named members of our staff as having supplied memos to members of our committee.

[Whereupon, at 4:20 p.m., the committee recessed to reconvene at 9:30 a.m., Thursday, June 13, 1974.]

IMPEACHMENT INQUIRY

Executive Session

THURSDAY, JUNE 13, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY.
Washington, D.C.

The committee met, pursuant to notice, at 9:53 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present; John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garri-son III, deputy minority counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; John R. Labovitz, counsel; James Reum, counsel; Gary W. Sutton, counsel; William Weld, counsel; Michael Hughes, research assistant; David Bennett, David Forrester, Alan Schwartz, and Denise Wilson, staff members.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. Mr. Doar, what paragraph are we on? Is it 6 or 7?

Mr. DOAR. It was 7. We are on 7.

The CHAIRMAN. Are we going to be able to complete this this morning?

Mr. DOAR. I think so.

Mr. Chairman, among the members that are here this morning are James Reum, a lawyer member hired by the minority, sitting on Mr. Jenner's far right. And there are some research people, library people, Michael Hughes, David Forrester, and Denise Wilson who are people that the committee has not met before. They all work on research and help assembling the books.

We are on paragraph 7.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Reum is the son of one of the finest, most highly

respected members of the General Assembly of Illinois, and his mother was a member of the Constitutional Convention of Illinois that drafted a recent new constitution.

The CHAIRMAN. We are pleased to welcome such distinguished members of the staff.

Mr. DOAR. Paragraph 7.

Mr. SUTTON. Dean has testified that on August 17, 1971, he prepared a memorandum entitled, "Dealing With our Political Enemies," which addressed the matter of how the administration could use the available Federal machinery to screw its political enemies. Among Dean's suggestions was that key members of the staff should determine who was giving the administration a hard time, and that they develop a list of names—not more than 10—as targets for concentration. Dean has testified that to the best of his recollection the memorandum was sent forward to Haldeman and Ehrlichman for approval, disapproval, or comment.

Ehrlichman testified that he could not recall receiving any memorandum with respect to the enemies list from Dean or any other person in the White House.

Mr. DOAR. In Dean's testimony, he refers to it as a draft, and standing alone the draft is, seems of little pertinence. But, if you look, as you come to the other paragraphs, there is enough pertinent information contained in the other paragraphs with reference to matters that Dean discusses in the memorandum to have made us conclude that we should include it.

As I say, Mr. Ehrlichman testified that he did not recall receiving any memorandum with respect to the enemies list or any other person in the White House.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. As you know, yesterday I objected to the relevancy of a great deal of this material, and I want to express further objection this morning to using the, or feeling that we are compelled to use the precise language, which I feel is completely wrong. And I think it was wrong language for them to use and for our committee to adopt. It seems to me to be quite inappropriate. I do not know how this is going to be used ultimately, whether it will be published as an expression of a statement of information made by this committee.

I think that if we just strike the words "screw its" and put in the word "against" it would certainly, it would certainly be meaningful and be consistent with the kind of language that I think this committee might want to use. It could use the available Federal machinery against its political enemies. So, I would suggest a revision of that language accordingly.

The CHAIRMAN. Well, I don't want to belabor this, but I think the only way we can really correct it is by really correcting it and putting quotes around it because that is material that was quoted.

Mr. DOAR. Paragraph 8.

Mr. SUTTON. On September 9, 1971, Colson sent Dean a memorandum stating that he had checked in blue those to whom he would give top priority. Dean testified that attached to Colson's memorandum was an opponents list memorandum from Bell dated June 24, 1971, and a

document entitled "Opponent Priority Activity" containing the names and brief descriptions of 20 political opponents with check marks beside 11 of the names.

Mr. DOAR. I called the committee's attention to this memorandum yesterday of Mr. Colson in connection with paragraph 5 I believe. And the date of the memorandum again. Mr. Colson's memorandum, is September 9, and the Bell memorandum to Dean without the check marks, was dated June 24, 1971. Paragraph 9.

Mr. SUTTON. On or about September 14, 1971, Dean sent to Haldeman's aide, Lawrence Higby, a list of names Higby requested. Most of the names were the same as those checked by Colson in the list attached to the September 9, 1971, memorandum discussed in the preceding paragraph.

Dean testified that upon a request from Haldeman that he wanted to nail this down as to the 20 or the minimum number with whom they could do something, Dean sent the list to Higby for Haldeman's final review. On several occasions thereafter, Dean received names for the enemies project from Higby and Strachan, also an aide of Haldeman.

Dean testified that he also received a list of McGovern campaign staff prepared at Ehrlichman's direction by CRP director of ballot security, Murray Chotiner. Dean has testified that the lists were principally used by Colson and Haldeman, and that he did not know what they did with them.

Haldeman has testified that enemies lists or opponents lists were used for withholding White House courtesies and invitations from those who had expressed opposition to administration policies.

Mr. LATTA. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Just a matter of inquiry. I, like the gentleman from Illinois, would like to know the relevancy of this. I have been around here quite a few years. I have been here under four administrations and if it had not been the policy of various administrations to reward their friends and to forget about other people it would be a different story. And these invitations that go out from the White House, I served under Kennedy and I served under Johnson and I never got an invitation to the White House for any kind of a state dinner because I happen to be a Republican.

And I think this is common practice. And to be taking up the time of this committee with something and trying to make this an impeachable offense, I think we had better start back with George Washington.

So, Mr. Chairman, rather than take up the time of this committee, I think that we ought to come to some understanding as to what we want the staff to do in the way of taking their time and taking the time of this committee. And I do not think anybody on this committee is going to vote for making this an impeachable offense.

The CHAIRMAN. Well, if the gentleman would——

Mr. LATTA. What is the relevancy?

The CHAIRMAN. Well, I think that the gentleman has noted his feeling and his attitude regarding this material. But, I think that it is pertinent to the inquiry only insofar as it calls the attention of the members of the committee to information that bears on the activities

of a part of the allegations that have been described. And I think that only for this reason the material is included, and the members will have to draw their own conclusion.

While the member from Ohio disagrees, there may be other members who feel that there is some relevancy, and may draw other conclusions.

Mr. LATTA. Well, Mr. Chairman, may I suggest some things then that I disagree with this administration on, and maybe we can get some attention, and get some input from our district, for example, where I have a lot of projects out there that I would like to have funded. And I have been pleading for years for some help along Lake Erie, and it has fallen on deaf ears.

Maybe if we can get that into this inquiry somehow or other I might get some funding. Now, I think that might be pertinent, but to get some of these things out there that are really of interest to the members of this committee, if we can make those impeachable offenses.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Well, I would think in the great volume of work that the staff has done that they would come up with some pyrite as well as some gold occasionally and we have also heard the popular public discussion anyway of the enemies list. Now, everything we study does not have to turn out to be impeachable or incriminating or whatever you want to call it. But, I think if we indicated we had paid no attention to the subject of the enemies list we might be subject to criticism and far worse things imagined than perhaps existed.

I can go along with the gentleman from Ohio I had thought it was a popular pastime to award grants to your friends and get them to your enemies, but get them a little later. But, I still think we have an obligation to look into this enemies list and I think the fact that it might be done in a way that was unpleasant but still not impeachable does not mean that it could not be done in a way that possibly would tend toward impeachment.

Mr. McCLORY. Would the gentleman yield?

Mr. HUNGATE. Certainly I would yield.

Mr. McCLORY. The thing that occurred to me in the Senate Water-gate Committee, their hearings, was that they wanted to sensationalize, and they wanted to dramatize, and attract press attention, and the political enemies list is key to that. And I just thought it was beneath the dignity of this committee that we would branch out into this peripheral, irrelevant area, and dignify this kind of thing in our records.

And I just, I hope, that at the appropriate time the committee will see fit to reject the whole subject and not include it as a part of our report.

Mr. DENNIS. Would the gentleman yield?

Mr. HUNGATE. If I have the time I am glad to yield: yes, sir.

Mr. DENNIS. I thank my friend from Missouri for yielding. I simply want to observe I think not only in this subject but in a number of other subjects that we are taking up that none of it is relevant unless at some point which may yet develop, we connect some of these activities with the President. We are not impeaching Haldeman, or Dean, or

Higby, and somewhere there must be a link, there must be a link or it all is irrelevant.

And I thank the gentleman.

Mr. HUNGATE. I thank the gentleman for his comments.

The CHAIRMAN. I think we had better continue. Each member will draw his own conclusions, I am sure, after the material has been fully digested.

Mr. DOAR. Well, the memos behind tab No. 9 are internal White House memos from Dean to Higby and from Strachan to Dean, and they relate in some instances to a number of people, and at other times they relate to just one person. And the testimony of Mr. Haldeman with respect to the use of these lists, is found at 9.2. Paragraph 10.

Mr. SUTTON. On September 22, 1971, John Caulfield wrote a memorandum regarding plans for scheduling Lawrence Goldberg to function in the Jewish area at the Committee for the Re-Election of the President.

Caulfield stated that Goldberg was actively engaged in the Anti-Defamation League activities and that consideration should be given to a potential question of loyalty. On October 6, 1971, Caulfield sent a memorandum to Dean attaching lists of charitable contributions from Goldberg's tax returns and stating that it postured an extremely heavy involvement in Jewish organizational activity.

Caulfield also stated that Attorney General Mitchell should be discretely made aware in this regard. Caulfield has testified that he obtained information on Goldberg's financial status from IRS Assistant Commissioner for Inspection, Vernon Acree, and that the purpose of obtaining the information was to determine whether Goldberg was financially solvent and therefore, able to assume a campaign position at CRP.

Mr. DOAR. John Caulfield's memorandum is at 10.1. The fourth paragraph on the memorandum indicates that he is waiting for results of an IRS check on Goldberg's financial status.

Tab 10.2 is John Caulfield's memorandum to John Dean of October 6, 1971, and attached to that memorandum are schedules which Caulfield testified he secured from an examination of Mr. Goldberg's Federal income tax returns for the years 1968, 1969, and 1970.

Mr. WALDIE. May I ask a question at that point?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, again the authority for access to these income tax returns that Acree turns over, I presume that is the President's authority delegated to Caulfield? Is that the legal authority that is being exercised that permits Caulfield to get these returns, or was it illegally obtained?

Mr. DOAR. Caulfield at that time was in the White House.

Mr. WALDIE. Well, does Caulfield get these returns under the law from Acree as a result of the delegation of authority from Caulfield from the President?

Mr. DOAR. No, I do not believe he does.

Mr. WALDIE. What is his legal authority to have access to those returns?

Mr. DOAR. I do not believe he has any legal authority for access to those returns.

Mr. WALDIE. So, when Acree turns them over to Caulfield, Acree violates a law?

Mr. DOAR. Yes.

Mr. WIGGINS. What is the law, counsel?

Mr. DOAR. Section 7213 of the Internal Revenue Code.

Mr. WALDIE. Now, to go back to a question that I asked you yesterday about authority in turning over this information to a White House counselor, I cannot recall who that was offhand—

Mr. DOAR. Mr. Mollenhoff.

Mr. WALDIE. Mollenhoff. Mollenhoff had direct authority from the President to request those returns?

Mr. DOAR. He represented that to Mr. Thrower, Commissioner Thrower, and as Commissioner Thrower said in his affidavit following a discussion with Mr. Mollenhoff he determined that it was appropriate to make the returns available.

Mr. WALDIE. Could the President have delegated authority to Mollenhoff to request the returns?

Mr. DOAR. Yes. In connection with, and this is a practice that was followed, as I understand it, by other directors or commissioners of the IRS.

Mr. WALDIE. Could the President have delegated to Caulfield the authority to seek these?

Mr. McCLODY. Mr. Chairman, this would, this seems to me, unless we do have the direct evidence, this calls for an opinion or speculation.

Mr. WALDIE. Would you—well, now, Mr. McClory, I did not object to Mr. Latta asking all sorts of questions and your objection to relevancy and I would appreciate the same courtesy. It is a matter of law that I am trying to find out.

Mr. McCLODY. Well, but I don't think that it is appropriate for counsel to speculate as to whether or not the President could or could not. I think the question is whether or not the President granted any direct authority, and if we have—

Mr. WALDIE. Well, I will ask that question when I find out what the law is.

The CHAIRMAN. He is merely asking with regard to the law.

Mr. DOAR. The other section that the committee members may wish to look at is section 6103, and particularly 6103 subsection A which provides for inspection of returns only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.

So, it would be my opinion that the President could delegate the authority to inspect these returns to Mr. Caulfield, provided that there is a written order to that effect and that were then regulations that were adopted by the Secretary covering that inspection.

Mr. WALDIE. Now, has anyone, to your knowledge, asked Mr. Caulfield whether he had that authority?

Mr. DOAR. I do not believe he had that authority. I cannot tell you whether he was asked in the course of any of the times that he has been questioned or not.

Mr. WALDIE. Well, I would appreciate it if you would ask. It does seem to me rather strange that Mr. Caulfield and Mr. Acree would be testifying so blatantly to a violation of the law without attempting to

justify what they did pursuant to law. And the only justification would be that it was authorized by the President of the United States. If it was not, they violated a law, and the President is not involved.

The CHAIRMAN. Would counsel ascertain that and advise the committee?

Mr. BUTLER. Would the gentleman yield?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I have two points on that. One, we know that Mr. Mollenhoff said he worked out this arrangement with the IRS Commissioner regarding the release, and that was specifically stated in the affidavit.

Do we have any evidence that supposedly the arrangement was worked out between the parties here?

Mr. DOAR. No, we do not.

Mr. MEZVINSKY. Now, the second point is a deeper, I mean is beyond this.

If, in fact, we feel or if there is a question as to violation of the law, is it the responsibility of this committee to at least recommend or bring it to the attention of the proper authorities that should bring possible action against individuals that may have violated the law? Do we have that responsibility under this?

The CHAIRMAN. The committee has no such responsibility. The committee's responsibility is spelled out in the resolution. It is spelled out in the various resolutions that have been introduced, and I believe that that is the function of this committee.

Mr. MEZVINSKY. So if, in fact, we do know information that could raise a possible violation of a statute, or a criminal statute, that we are just supposed to keep it to ourselves?

The CHAIRMAN. I think——

Mr. MEZVINSKY. I mean, don't we have, at the same time——

The CHAIRMAN. I think the committee is not under an obligation to inquire into it.

Mr. MEZVINSKY. No; that is true. But, if, in fact, there is some——

The CHAIRMAN. You are talking about if in fact and we do not know if in fact because we are not ready to make such determinations of fact.

Now, if there are questions that may come to the attention of the committee that seem as though there might be possible violations, then I think that we are probably under the same obligation as any other Federal official to report the possibility of a crime or violation but I do not think that we can make a determination as to whether or not there has been a violation.

Mr. MEZVINSKY. OK. That's fine, Mr. Chairman. Thank you.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. For purposes of our record only, I would like to make reference to title 26, section 7213, since that section has been called to our attention. It bears the title: Unauthorized Disclosure of Information. Subparagraph A is "Income Tax Returns." Subparagraph 1 which is the operative section under A is captioned "Federal Employees and Other Persons." And I will not read you the section, it is long, but I call it to your attention.

And it is quite clear in my opinion, and counsel, I ask for a contrary

observation, that the section is aimed at the disclosure of information from a Federal employee to a person outside of the Federal Establishment and is not intended to make criminal the exchange of information among Federal employees. If it were read literally it would prevent Mr. Thrower from looking at, for example, and obviously that is not the intent of this statute, in my opinion. And I call it to the attention of the members, and they can draw their own conclusions from it.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I would like to suggest that in connection with a situation such as the one we are now discussing that counsel provide us for our fact books at least a reference to the applicable statutes.

I think it would facilitate, it would facilitate my understanding and ability to follow these procedures. The facts standing alone, I will have to confess. I am not familiar enough, intimately familiar enough, with the applicable statutes.

The CHAIRMAN. I would instruct staff to do it. It would be helpful.

Mr. DANIELSON. Thank you.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, just in line with that line of questioning. I wonder if you could bring to our attention the authority of an official, once he has the right to obtain IRS materials to disseminate it to others? In other words, if Mr. Caulfield properly had the authority to obtain the tax returns, did he also have the authority to disseminate it to Mr. Dean and other people?

And if you could provide us with that information with respect to dissemination as well that would be helpful.

Mr. DOAR. We will also respond to Congressman Wiggins' question about the scope of the statute. I think that I would like to look and check that, Congressman Wiggins, because I would feel that there probably are Treasury regulations that govern very strictly the disclosure outside of the Treasury. And I mean, I cannot think of a situation where Treasury officials or IRS officials would be authorized to disclose to somebody in the Justice Department for example, that information.

Mr. WIGGINS. I tend to concur with what counsel is saying. We are getting the regulations now.

Mr. DOAR. And so that is the thought I had.

The second thing is that I think the committee members should know that both the Special Prosecutor's office and the Joint Committee on Internal Revenue Taxation is looking into conducting investigations into the question of allegations of unauthorized disclosure.

And we are following those investigations and getting such information as we can from them. And when we have information which we think is pertinent, we will bring it to the attention of the committee.

The third thing is that the job of Mr. Acree in the IRS was the head of the inspection service, and based upon my knowledge of how that worked, the inspection service was an internal service that is, it was in internal operation. It was a unit that went around and checked on how the various IRS officers operated, and there was

some system within IRS whereby members of the inspection service could get returns from the various field offices on a request basis.

I think that one of the things that the Joint Committee is looking at is as to whether or not the regulations and rules with respect to the furnishing and the maintaining of records with respect to the transmittal of returns to the inspection service, had not, in fact, broken down in some ways with respect to the way they were administered and for how long a period of time this had been going on. That is all of the information I can bring to you about that.

Mr. Caulfield in his testimony before the Senate select committee at 10.3 does verify the fact that he does get the information. His explanation of why he got the information was because Mr. Goldberg was being considered for a position with the Committee To Re-elect the President and he wanted to provide some information to establish whether or not Mr. Goldberg was financially solvent.

Mr. SEIBERLING. Well, Mr. Chairman, if I may just sharpen up one point here?

That is not an authorized reason under the law, is it?

Mr. DOAR. No.

Mr. SEIBERLING. Thank you.

Mr. BUTLER. Counsel, do you have a memorandum prepared by your staff as to just what the situation is generally with reference to disclosures, and rights, and the status of regulations and so forth that might be helpful to us?

Mr. DOAR. We do not have one in the form to present, but we will have one.

Mr. BUTLER. All right. Thank you.

Mr. DOAR. Paragraph 11.

Mr. SUTTON. On or about September 30, 1971, Caulfield sent a memorandum to Dean reporting on IRS tax audit information about Rev. Billy Graham. Caulfield testified that he obtained the information from Assistant Commissioner Acree. On October 1, 1971, Higby sent a copy of Caulfield's memorandum to Haldeman with a transmittal slip bearing the handwritten notation "Can we do anything to help." below which is Haldeman's handwritten notation, "No. It's already covered." Dean has testified that the President had asked that the IRS be turned off on friends of his.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Doar, do we have reference—is there a specific IRS statute, specifically in this area of audits and respecting audits, supposedly? Do we have any reference to that? I have a vague recollection of the statute supposedly regarding—this is different than the enemies problem. This is a different kind of problem about audits, and stopping audits by the IRS.

Isn't there a specific criminal statute involved in this area?

Mr. DOAR. Well, that is section 7213, I think. I do not know that there is any difference between disclosing the information contained on an IRS audit—

Mr. MEZVINSKY. This is separate from disclosure. This is separate from the disclosure problem. I would like at least, could the staff check that out as to—

Mr. DOAR. All right.

Mr. MEZVINSKY [continuing]. As to this particular area. Thank you.

Mr. DOAR. Tab 11.1 is the routing slip which is attached to Mr. Caulfield's memorandum. It goes from Dean to Higby, and then it has Haldeman's initial, the initial "H" there and then down at the bottom there is "next question! Can we do anything to help!—I don't know but I am checking." And then the handwritten note, "No. It's already covered."

The information that came with that is dated on the next page and it is dated the 30th of September. It comes from Caulfield to Dean, and it refers to two taxpayers, one, the Reverend Billy Graham and the second one, John Wayne.

At the bottom of the page——

Mr. McCLORY. Mr. Chairman, could I ask this question?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Doar, I notice on page 47 of the transcript the question is asked: "Mr. Dean did not indicate where the assignments were coming from?"

And Mr. Lackritz said "I understand that. I just wanted to know specifically in this case he didn't indicate to you that the President was interested in this case?" Mr. Caulfield: "No, he did not." The thing that I am asking is don't you think that it would be well to include that in our statement of information, because otherwise the statement of information is to the effect that Dean has testified that the President said the IRS be turned off on his friends and this is really a denial that any direction came from the President.

Mr. DANIELSON. Would the gentleman yield?

Mr. McCLORY. I just think maybe Mr. Caulfield has stated that the assignment to Mr. Dean did not come from the President. That is all I am saying.

Mr. DANIELSON. Would the gentleman yield?

Mr. McCLORY. Well, you mean before I get the answer?

Mr. DANIELSON. Yes.

Mr. McCLORY. OK. I yield.

Mr. DANIELSON. I respectfully submit, or maybe I should say I inquire, could not that also be interpreted that Mr. Dean did not indicate where it was coming from other than indicating that it did not come from the President? There is no indication where it came from.

If you read the last previous sentence, I respectfully submit that it only means that there was no indication as to where it came from.

Mr. McCLORY. Well, Mr. Caulfield indicated or stated that Mr. Dean did not indicate that it was coming from the President.

Mr. DOAR. That is correct.

Mr. McCLORY. There was no indication that it was coming from the President, something to that effect.

Mr. DANIELSON. It didn't indicate anything.

Mr. SEIBERLING. Would the gentleman yield? That is not what the statement says. He simply asks, he says, "He didn't indicate to you that the President was interested", which does not mean that he indicated that the President was not interested.

Mr. McCLORY. Well, he just said that he did not indicate that the President——

Mr. SEIBERLING. He just didn't indicate one way or the other.

Mr. DOAR. I think Mr. Dean's testimony is, he said at page 95 of his testimony at 11.3, he said "I have some documents." And Mr. Thompson asked him: "Do you know of any other use of IRS before you came on board the White House, your understanding that the IRS had been used previously?"

And Mr. Dean said:

I have some documents that are very sensitive because of the people involved where the President had asked that it be turned off on friends of his. He asked me and I was sitting around, and in the meantime I got a little bit of information, and I sent it to Higby who sent it to Haldeman, and I asked Haldeman what he wanted me to do. I had got a note back in Haldeman's handwriting that it had already been taken care of.

And then as the Congressman from Illinois has pointed out, when Caulfield was asked whether Dean indicated where the request had come from, Mr. Caulfield answered: "Mr. Dean did not indicate where his assignment was coming from."

Mr. DANIELSON. Mr. Chairman?

Mr. KASTENMEIER. Mr. Chairman?

On another point—I will yield if it is on the same point.

Mr. DANIELSON. Well, I think there is an error in tab 11, a technical error in the fourth line where you state on October 1, 1970.

The CHAIRMAN. He corrected that to October 1, 1971.

Mr. DANIELSON. Thank you.

The CHAIRMAN. When he read it.

Mr. KASTENMEIER. Mr. Chairman, for my own clarification, and I was going to ask this before, does the term "No, it's already covered" is that meant to be interpreted as "No, it's already taken care of"? Is that the equivalent?

Mr. DOAR. Well, we don't have any information.

Mr. KASTENMEIER. You just referred to something Haldeman had stated in a note saying "No, it's already taken care of." But here it says "No, it's already covered."

Mr. DOAR. Well, Dean testified that Haldeman's handwriting was that "No, it had already been taken care of," and that's what Dean testified to. And the note says "No, it's already covered."

Mr. KASTENMEIER. I gather then that means the same thing?

The CHAIRMAN. Well, I don't know that counsel can say.

Mr. KASTENMEIER. All right.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I am looking at page 96 of tab 11.6, counsel. It is of interest to me that it starts on the preceding page, 95, because it relates to Presidential involvement, and Dean is testifying before the Senate select committee about the instructions he received from the President. He doesn't use the words "the President" so often as he uses "he," but I think that in that context he was speaking about the President.

Do you agree with that, as a preliminary observation, that Mr. Dean was talking about the President in that conversation? "He asked me?" "He was talking about the election."

The CHAIRMAN. Could you kindly clarify and identify—

Mr. WIGGINS. Bottom of page 95 and top of page 96 of 11.3.

Mr. DOAR. Yes, I see that.

Mr. WIGGINS. Well, the thing that strikes me, Mr. Doar, is that sounds very much like the conversation of September 15. And do you have reason to believe that Dean is referring to that September 15 conversation?

Mr. DOAR. Well, I don't have any reason to believe he is referring to the September 15 conversation with respect to the Graham returns, because they are a year earlier.

Mr. WIGGINS. Well, I am trying to understand when Dean got the instructions from the President personally about doing some of these things, and there is one sentence in there that sounds familiar. It's below the brackets on page 96. Mr. Dean said "He" meaning the President "then talked about the fact that after the election we are going to get rid of a lot of people and so forth that were not helpful." Mr. Thompson's question makes it clear that he is referring to a conversation in this meeting and that is the meeting where he received the other information.

And I have before me a transcript of the September 15 conversation, and if you think it is probable or even possible that Mr. Dean is referring to that conversation, perhaps September 15 ought to be cross-referenced so that we can check his recollection.

Mr. DOAR. Well, I don't think, I don't think that his answer to the question that is bracketed there, that he is referring to the September 15 conversation.

Mr. WIGGINS. Well, right below that Mr. Thompson's question is "Any other areas in this meeting?" And then Mr. Dean responds by using the language which I find familiar at least.

Mr. DOAR. Yes; I know. But, if you look at Mr. Thompson's question, he says: "Do you know of any other use of IRS before you came on board the White House?" And so the question, it is just not reconcilable, that reference to before you came on board.

And then the afterwards, any other areas, in the meeting, which I agree with you seems to look like the September 15, 1971, meeting or 1972, September 15, 1972, meeting.

Mr. RAILSBACK. Would the gentleman yield?

Mr. DOAR. So that Dean is talking about a memorandum that was dated in 1971, and then he goes to a meeting in 1972 which looks like a meeting in 1972. And his question though was, by Mr. Thompson was, "before you came on board at the White House."

Mr. WIGGINS. He obviously got no instructions from the President apparently until the time he came on board. Of special significance I think to all the members is what the President's role was and this is direct testimony from Dean that he received some sort of instructions from the President personally.

Mr. DOAR. Well, we are very interested in securing the last 17 minutes of the September 15 tape. And as we will develop later this morning, that tape is over in the possession of Judge Sirica.

Mr. WIGGINS. Mr. Railsback wants me to yield and I will.

Mr. RAILSBACK. Just along on the same page, 96, who retyped from the indistinct original? Was that our staff?

Mr. DOAR. Yes.

Mr. RAILSBACK. Because I think they are referring to Roger Crampton in the last full paragraph on the page, Roger Crampton who was

with the Justice Department and also Rehnquist, who was with the Justice Department, rather than Runquist.

Mr. DOAR. We just typed them as they were spelled on the indistinct original.

Mr. SEIBERLING. It is on the next two pages farther on.

The CHAIRMAN. They were just copied verbatim. It is just copied as it is in the indistinct original. That is the way it is spelled.

Mr. SEIBERLING. Would the gentleman yield for an observation?

Mr. FLOWERS. Would the gentleman yield?

Mr. SEIBERLING. Would the gentleman yield for an observation?

Mr. RAILSBACK. Yes; I will be glad to.

Mr. SEIBERLING. I think it is perfectly clear from page 96 that Dean is talking, however, about a meeting with the President because in the next sentence he says "Haldeman began taking notes, and Haldeman interjected at one point and said to the President," and so forth. So, it is a meeting with the President.

Mr. DENNIS. Mr. Chairman, may I inquire of counsel?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Here at the bottom of page 96, Dean refers to documents on this subject, and have we got those and do we know what he is talking about, and are they available?

Mr. SUTTON. We do not know specifically for certain which documents he is talking about, but from what he says he seems to be referring to the documents which are contained in the tab concerning the Reverend Billy Graham audit.

Mr. DENNIS. You mean that in the tab we are considering here he was thinking—we have all of the documents that he is referring to at the bottom of page 95?

Mr. SUTTON. I don't know if we have all of them, but I believe those are the documents which he is referring to.

Mr. DENNIS. That may well be true. I would suggest that if he has got very sensitive documents which indicate that the President asked him to do what he says here if there is anything along those lines in addition, that that would be a very legitimate line of inquiry for you gentlemen to pursue.

Mr. DOAR. Tab No. 12.

Mr. SUTTON. On or about October 6, 1971, Caulfield sent a memorandum to Dean transmitting information about tax audits of John Wayne and nine other entertainers and former entertainers which Caulfield had instructed the IRS to furnish. Caulfield has testified that he obtained the information from Acree.

Mr. DOAR. The memorandum of John Caulfield is at 12.1, and the subject of that memorandum, and the second page of the memorandum, is the audit examinations of individuals in the entertainment industry who are politically active.

And Caulfield—

Mr. LATTI. Mr. Doar, are those supposed to be enemies? The reason I asked the question is I see Frank Sinatra's name and I see Ronald Reagan's name and I see John Wayne's name. Are they supposed to be the enemies?

The CHAIRMAN. I also see Peter Lawford, the brother-in-law of President Kennedy.

Mr. DOAR. Congressman, I think if you look at the first page of the memorandum, it says that this is a memorandum dealing with audit examinations of individuals in the entertainment industry who are politically active. And then he says:

Per your instructions of September 28, we have selected some individuals in the entertainment industry who were politically active during prior elections and determined their audit history. We attempted to select those individuals whose economic condition is similar to that of John Wayne. Our reviews showed the following:

Mr. LATTI. One further question. Has your investigation turned up anything that these audits were turned off on such as John Wayne? I saw where he made some statement recently that he is audited constantly.

Mr. DOAR. Our investigation has not turned up anything that any audit of John Wayne was turned off.

Mr. LATTI. OK.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, I want to be sure on this point. This tab does not indicate that the audits were ordered on these individuals. does it? Rather does it not indicate that it was merely a report of audits that had previously been undertaken for whatever proper purpose?

Mr. DOAR. Yes; that is right. And second of all is that Mr. Thrower testified that there was a selected case, a sensitive case, file that summarized and listed certain audits that were being undertaken by the IRS at a particular time and that particular list went to the Treasury, to the Secretary of the Treasury, and presumably was available to the President on a regular basis, and former Presidents.

Mr. WIGGINS. I get the impression at least—and correct me if it is an illogical one—that John Wayne perhaps felt that he was being discriminated against, and this audit of similar people of economic circumstances in the industry was to compare what had been done to Mr. Wayne as compared to other people?

The CHAIRMAN. I think that is a fair impression since the document, 12.1, remarks “The Wayne complaint we viewed”; so apparently Mr. Wayne complained.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, on page 4 there appears to be one of those résumés deleted and the indications are that there were supposed to be John Wayne and nine other entertainers, and there are only eight others, unless you consider Lucille Ball and Gary Morton together. Are there any indications as to whether or not one of those résumés was deleted?

The CHAIRMAN. What is the question, Wayne?

Mr. OWENS. The question is on page 4 it appears they have omitted one of those audit résumés, and there is one missing according to the number they state is supposed to be there.

Mr. DOAR. This is the way the document came to us from the Senate select committee. We do not know the answer to that.

Mr. EDWARDS. Mr. Doar?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Is there any information as to the distribution of the

tax information regarding these entertainers? Do we have any information as to whether or not this information was transmitted to Mr. Wayne?

Mr. DOAR. We don't have any information about that.

Mr. WALDIE. Well, we have the testimony and the testimony says it was not, or he does not know.

Mr. DOAR. Mr. Caulfield says that he has no knowledge that the information was communicated back to Mr. Wayne.

Mr. SUTTON. From October 6 through October 13, 1971, Newsday published installments of an article on C. G. Rebozo. Dean has testified that after the article was published he was instructed by Haldeman that one of the authors of the article should have some problems.

Dean and Caulfield discussed procedures to institute an audit of Robert Greene, a Newsday reporter who had written the article. Caulfield has testified that he discussed the request with Acree who told Caulfield that an audit could be instigated by use of an anonymous letter. Caulfield has testified that Acree later informed him that the procedure was followed.

The staff of the Joint Committee on Internal Revenue Taxation has stated that Greene was not audited by the IRS, but was subsequently audited by New York State tax authorities on the basis of information supplied under the Federal/State exchange program, but that the staff believes that the audit was unrelated to Greene's being classified as a White House enemy.

Mr. DOAR. This document refers to the report of the staff of the Joint Committee on Internal Revenue Taxation. We have copies of that report for all of the members and if the members wish, we could pass that out, Mr. Chairman, so that it would be available. That gets into the investigation of the Joint Committee with respect to some of the allegations.

The CHAIRMAN. Who is that prepared by?

Mr. DOAR. The Joint Committee on Internal Revenue Taxation of the Congress. It was a staff report. And that is available and we will distribute it at the next recess or make it available before lunch.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, there are only two excerpts here from the Newsday article and I cannot gather from that tab what it was that got Mr. Haldeman so upset. Can you tell me the gist of these Newsday pieces?

Mr. DOAR. I cannot. I will have to get the entire article for you.

Mr. SUTTON. The article discussed the financial dealings of Mr. Rebozo and the President.

Mr. DOAR. Tab 14.

Mr. SUTTON. Dean has testified that he received requests from Haldeman to have audits commenced on certain individuals. Haldeman has testified that he could recall no specific requests but that information that had come to the attention of the White House or information that appeared to indicate a reason for an audit may have been referred by the White House to the IRS. Caulfield has testified that sometime after Dean's request for an audit of Greene, Dean met with Caulfield and Acree and directed that full audits be conducted of three or four

other individuals. Caulfield has testified that he and Acree decided not to conduct the audits and so far as he knew, no audits were conducted of any individuals.

Mr. DOAR. Mr. Haldeman testified at 14.2, page 3137, when he was asked by Senator Talmadge did he, or anyone to his knowledge within the White House ever request the White House to make a political audit of any taxpayer, Mr. Haldeman said:

In the sense of referring information that had come to our attention, or that appeared to indicate a reason for an audit, it is quite possible that that was done. I recall no specific such request.

Second book.

Mr. DENNIS. Mr. Chairman, may I ask a question? Mr. Doar, where is Mr. Acree now?

Mr. SUTTON. Mr. Acree is presently the Commissioner of Customs. He was appointed to that position in May 1972.

Mr. DENNIS. So, he is available for inquiry about these matters. I assume, such as whether or not he and Caulfield did decide not to make an audit and so forth?

Mr. DOAR. Yes.

The CHAIRMAN. Is this second book available?

Mr. DOAR. It will be available in about 10 minutes.

The CHAIRMAN. We will take a 10-minute recess until the second book is distributed.

[Short recess.]

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 15.

Mr. SUTTON. On October 15, 1971, Caulfield wrote a memorandum to Dean recommending that background information obtained from the FBI about the producer of a motion picture derogatory to the President be released to the media and that discreet audits be instituted on the producer, the distributor of the film and a related corporation. Caulfield testified that Dean requested he run an FBI name check, and that, at Caulfield's direction, Anthony Ulasewicz conducted a "pretext inquiry" at the offices of the film's distributor. On October 20, 1971, Caulfield sent a memorandum to Dean reporting on a pretext interview of the film's distributor and recommending that because the financial handling and distribution of the film was in the hands of amateurs, any actions against the producer including background information and IRS capability, be carefully weighed and well hidden.

Mr. DOAR. The material behind this tab sets forth the exchange of memos and the reports of Caulfield to Dean on this particular film and the producer of that film. The last attachment to 15.1 is an attachment from Mr. Fred Fielding to John Dean which indicates that there is a reference to "leaking derogatory information and doing IRS audits in this case just doesn't seem to be a solution".

Tab 15.2 of Mr. Caulfield's testimony in executive session before the Senate select committee, Paragraph 16.

Mr. WALDIE. A question, Mr. Chairman.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. On 15.1, Mr. Doar, what does the reference to "Do a Nofziger job" mean? I know what a Nofziger job is but what does the reference mean to "do a Nofziger job" on De Antonio and O'Brien?

Mr. SUTTON. Mr. Caulfield testified about that and I don't believe that that is included in the testimony here. I believe he testified this was a reference of a possibility to giving the information to Mr. Nofziger who would then make a suggestion to people in the press that there might be a news story about this.

Mr. WALDIE. Thank you.

Mr. DOAR. Tab 16.

Mr. SUTTON. Prior to November 7, 1971, a talking paper and memorandum were prepared with respect to making the IRS politically responsive. Dean has testified that he and Caulfield prepared the documents for Haldeman's use during a meeting with either the Secretary of the Treasury or the Commissioner of the Internal Revenue. Haldeman has testified that he could not recall either seeing the briefing memorandum or having any specific conversation with the Secretary of the Treasury.

Mr. DOAR. Those are again two updated memoranda of John Dean's. They were written during a time that Mr. Walters was the Director of IRS.

In paragraph B of exhibit 44 at page 1682, where there is a reference to cracking down on tax exempt foundations, I do want to call the committee's attention to something that was discussed yesterday.

And that was the Brookings Institution. The implication may have been left yesterday that there was something improper about securing information of or something illegal about securing information on tax exempt foundations. There are statutes that provide for public disclosure of the financial records of foundations, and they are different and treated differently than ordinary income tax returns of individuals or corporations.

This memorandum relates to matters that will be discussed in subsequent tabs. Number 17.

Mr. SUTTON. In a political matters memorandum dated December 2, 1971, Strachan reported to Haldeman that Mitchell and Dean had discussed the need to develop a political intelligence capability. Strachan stated that Sandwedge had been scrapped and that instead Gordon Liddy would become General Counsel to CRP, effective December 6, 1971. Strachan stated that Liddy would handle political intelligence as well as legal matters and would also work with Dean on the political enemies project.

Mr. DOAR. This memorandum happens to be the same memorandum that was in tab 1 of volume 1, book 1 of the initial presentation and the reference to the fact that Liddy would continue to work with Dean on the political matters or on the political enemies project is on page 3 of that memorandum.

This was one of 21 political matters memoranda that were furnished to the staff by the White House of the 28 memoranda that Mr. Strachan testified that he prepared for Haldeman between I believe October 1971 and September 1972.

Mr. Strachan has testified that he destroyed one of the memorandums and I believe that was the memorandum of March 30. And the other six memorandums were not located.

I believe we have presented at various times during the presentation four or five of these political matters memorandums. The others are over in the files of the staff. But, we have not presented the entire set of them. Tab number 18.

Mr. SUTTON. In early 1972 John Dean sent a memorandum to Haldeman, Ehrlichman, Klein, Colson, and Ziegler, with a carbon copy to Mitchell, stating that an article by a journalist about a campaign fundraiser was scheduled for publication the following day. At this time an unsigned memorandum was prepared containing personal information about the journalist and describing his financial affairs. It stated that during recent years the journalist had not reported any personal income derived from the operation of a corporation in which he had an interest. It also stated that certain facts suggested to IRS professionals that an audit might resultingly be in order. The memorandum also stated that because of the sensitivities of the ongoing inquiry, no audit should be initiated unless directed.

Mr. DOAR. [Classified material deleted.] Tab No. 19.

Mr. SUTTON. On June 12, 1972, Colson sent a memorandum to Dean stating that Colson had received a well-informed tip that there were discrepancies in the past returns of Harold Gibbons, a vice president of the Teamsters Union. Colson stated that Gibbons is an all-out enemy and asked that Dean please see if this one could be started on at once.

Dean has testified that he put the memorandum in his file and that it remained there.

Mr. DOAR. The Colson memorandum is at 19.2 dated June 12, 1972. And in the last paragraph of that memorandum, Colson says to Dean "Please see if this one can be started on at once." Tab No. 20.

Mr. SUTTON. Former Commissioner of Internal Revenue Walters, has stated that during the summer of 1972 he was asked by Treasury Secretary Shultz to check on a report by John Ehrlichman that Democratic National Committee Chairman, Lawrence O'Brien, had received large amounts of income which might not have been reported properly. Walters has stated that he reported to Shultz from the IRS's examination of O'Brien's returns for 1970 and 1971. Walters has stated that Ehrlichman was not satisfied with the report on the status of O'Brien's returns and that because of Ehrlichman's inquiry, O'Brien then was interviewed during the summer of 1972. Walters has stated that Ehrlichman was not satisfied with the interview and that he told Shultz he needed further information about the matter.

Ehrlichman has testified that he had learned from a sensitive case report that the IRS was investigating O'Brien, and that he called Shultz to complain that the IRS was delaying the audit until after the election.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Ladies and gentlemen of the committee, I conducted the interview of former Commissioner Walters. I would say, since the gentlemen from Illinois has consistently inquired as to the drafting of these affidavits, that this affidavit was drafted by Mr. Walters himself and furnished to us.

The affidavit supports the tab fully: that is, the tab is a paraphrase of the affidavit. And Mr. Walters, as he recites in his affidavit, repeatedly referred to or responded to requests by Mr. Ehrlichman relayed through the Secretary that examination had been made of Mr. O'Brien's returns and that no unreported income was being disclosed. That is, that Mr. O'Brien had received large income but that he had

reported it in his returns, and there was nothing further the IRS could do about it.

And then you will notice that in paragraph 9, it came to a point at which Mr. Walters, in reporting to the Secretary, he said this has to end because we have done everything we can do. And you will notice on page 5 of the affidavit that during the telephone call with the Secretary with Mr. Walters present, to Mr. Ehrlichman, both the Secretary and Walters indicated strongly to Mr. Ehrlichman that they had done everything in examining that return.

And then Mr. Ehrlichman said, "I am goddamn tired of your foot-dragging tactics." And Mr. Walters, in his affidavit which he drafted himself, then says:

I was offended and very upset, but I decided to make no response to that statement. Following the telephone conversation I told Secretary Shultz that he could have my job anytime he wanted.

He continued on until the following year.

The CHAIRMAN. Ms. Holtzman.

MS. HOLTZMAN. Mr. Jenner, was Mr. Walters asked about the material in tab 16 that Haldeman presumably, or allegedly, had a meeting with either the Commissioner of Internal Revenue or the Secretary of the Treasury in which there was a question about making IRS politically sensitive? Was he asked about whether or not he had such a meeting with Mr. Haldeman?

MR. JENNER. I would have to respond and say he was not asked and we did not have that in mind. He did tell us in some detail about the handling of the sensitive report procedure, and was very careful to say to us that the sensitive reports went to the Secretary and not directly from the IRS to the White House.

MS. HOLTZMAN. I was just wondering whether we had any further confirmation about the results of tab 16, and I was thinking that it might be useful to ask Mr. Walters as to whether or not he could confirm that.

MR. JENNER. What he did say to us was he talked to Mr. Ehrlichman, but to the best of his recollection he never talked to Mr. Haldeman.

MS. HOLTZMAN. Thank you.

MR. LATTI. Mr. Jenner, are you going to comment on Mr. Ehrlichman's testimony on page 111 before we pass on to 21? I think he sets forth his reasons.

MR. DOAR. I was going to do that.

MR. LATTI. Thank you.

MR. DRINAN. Mr. Chairman, point of inquiry. On page 3 of the deposition of Mr. Walters, he indicates right in the middle: "During 1972 it was IRS policy to postpone investigations involving sensitive cases until after the election." Is that a written, stated policy, and I wonder under whose authorization is it?

MR. JENNER. It is not a written policy, but it had been a policy of the Department not to pursue sensitive inquiries until after election. There was nothing devious about this, Father. It was the policy, and the point that Mr. Walters was emphasizing with us was that the request and the pressure—well, the repeated requests to proceed with the Mr. O'Brien inquiry were at odds with the policy of the Department applied to everybody.

Mr. DRINAN. Had that policy been adopted in previous Presidential election years by previous administrations?

Mr. JENNER. We asked Mr. Walters and he said to the best of his recollection that was not so.

Mr. DRINAN. Is there anything further on that that we should know?

Mr. JENNER. I think not, sir.

Mr. DRINAN. Thank you.

Mr. JENNER. May I say, Mr. Chairman, I do not mean to imply nor does Mr. Walters by the fact a previous administration had not done this that the fact that in the present administration of the IRS that was the policy that there was anything wrong about it.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McCLORY.

Mr. McCLORY. Could I just inquire? Mr. Walters was appointed in 1971 and he went out in 1973 so he was just replying on not actual experience in the Department when he said that he thought that no similar practices were carried out in prior administrations?

Mr. JENNER. Well of course, Congressman McCloory, when we asked him that question, he necessarily was calling on whatever information he had, most of which would be hearsay, of course. But, fairly reliable in that he made the inquiries and he said that it was a policy of this administration.

Mr. McCLORY. Well, was there any investigation of Mr. O'Brien's income tax return or his connection with the Hughes Tool Co.? Was that in the works prior to this time that Mr. Ehrlichman asked him to speed it up?

Mr. JENNER. Yes; it was. But, under the policy it was being held up until after election.

Mr. McCLORY. Yes; well, that could be purposeful, that could be deliberate for political purposes, could it not?

Mr. JENNER. I am anxious to disabuse the members of the committee that this policy of the administration, there was not anything devious about it.

Mr. McCLORY. Right.

Mr. JENNER. The only real point here is that there was pressure—strike the word “pressure.” There were these repeated requests to proceed despite that policy with the inquiry into Mr. O'Brien.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Ehrlichman's testimony explaining how he got into this and what he was doing is at 20.2. At page 110 of that testimony at the bottom of the page this question is asked:

At about the time that Secretary Shultz became the Secretary of the Treasury, do you recall a conversation with the Secretary regarding ongoing tax investigations against Hughes Tool Company which involved Mr. O'Brien?

Mr. Ehrlichman answered: “Yes.”

Can you recall what information you had available to you and from what source about the nature of that investigation?

And Mr. Ehrlichman answered: “I had the sensitive case report from the IRS about that.”

Mr. Armstrong: “Now, at the conclusion —”

Well, then, you skip down and he asked about this, and tells about

the conference and reporting to him about the audit had been completed, and that there were no improprieties, and then he said that, as far as they were concerned the matter was closed. That is as far as Treasury and IRS. And Mr. Armstrong asked Mr. Ehrlichman: "And what was your reason for that?"

And Mr. Ehrlichman said:

OK. You know, there it is. My concern was throughout that the IRS down in the woodwork was delaying the audit until after the election, and that that seemed to be the case, that there was a stall on because when the sensitive case report came in he said when are you going to audit him? Well, they had 75 well-selected reasons why they should not audit him, and they weren't having any of the same reasons with regard to Republicans at that time, and I thought that was a little unevenhandedness, and I am talking to the Secretary now "George, you guys are being lopsided. Here is a probable cause for auditing O'Brien, and it is apparently not going forward, and we can read in the paper every day about audits of Republicans. Now, come on." And he said "Well, I will check into it." And he checked into it, and he came back and he said—he had a whole list of why he shouldn't be audited right now. His son is sick, he's out of town, they can't find the books. And I said "Are you satisfied with that?" And he said "No." And I said "Well, neither am I." And I wanted them to turn up something and send him to jail before the election, and unfortunately it didn't materialize.

Tab No. 21.

MR. SUTTON. On or about August 29, 1972, Shultz, Walters, and assistant to the IRS Commissioner Roger Barth, telephoned Ehrlichman to report on the IRS investigation of Lawrence O'Brien. Shultz informed Ehrlichman that the IRS had closed the investigation. Ehrlichman complained to Walters that the IRS had been stalling the audit and he told Walters what a bad job he had done.

MR. DOAR. On page 112 at tab 21.1 is Ehrlichman's testimony on this. He continues on:

MR. ARMSTRONG. On the occasion when Commissioner Walters was done with the audit and there were no improprieties, do you recall discussing with Commissioner Walters that either they had been stalling the audit—

MR. EHRLICHMAN. Sure.

MR. ARMSTRONG. You had a discussion with him too?

MR. EHRLICHMAN. You are darn right. It was my first crack at him. George would not let me at him. George wanted to stand between him and his Commissioner and this was the first time it—I had a chance to tell the Commissioner what a crappy job he had done.

MR. ARMSTRONG. And did you suggest that they reopen the audit at that time?

MR. EHRLICHMAN. No; they told me it was closed, so there was not any.

MR. ARMSTRONG. So you accept it as a fate of happening?

MR. EHRLICHMAN. Sure.

MR. DRINAN, Mr. Chairman?

The CHAIRMAN. Father Drinan.

MR. DRINAN. Point of clarification, on page 112, Mr. Ehrlichman's statement in 21.1, he states that he reads every day about audits of Republicans. Were there, in fact, deviations from the rule not to audit in an election year with regard to Republicans?

MR. DOAR. We do have information with respect to Mr. Rebozo and with respect to Donald Nixon that there was a postponement of the audit until after the election.

MR. DRINAN. I think this is very relevant that this rule that was never heard of, that was adopted by Mr. Walters all by himself is not in the Federal Regulations or any of the printed regulations, that

they postpone audits. I think the committee should have facts on this—how many postponements were there, how many times was the rule violated, what the rule meant, what really is a postponement, and so on. I, for one, would like to have such information.

Mr. SUTTON. Just so that what we have said is not mischaracterized, Mr. Walters as he related it to us made it clear that this was a decision that he and all the Assistant Commissioners and perhaps the Treasury people had reached that in cases where there would be no chance of lost revenue as a result thereof, and in cases where no injustice would be done, if there were an investigation which would seem to be appropriate of people involved or connected in any way in the campaign, that in those circumstances, it would be postponed until after the election.

Mr. DRINAN. Except that in every postponement, revenue is lost, so that condition can never be fulfilled.

Mr. DOAR. No; that is not so.

Mr. DRINAN. Potential revenue. Well, thank you.

Mr. HOGAN. Is my understanding faulty that new newsstories appeared about an audit of Ronald Reagan before the election?

Was there not in fact a newsstory to the effect that Ronald Reagan's tax returns were being investigated?

Mr. SUTTON. I do not recollect that.

Mr. THORNTON. Mr. Chairman, one quick question.

The CHAIRMAN. Mr. Thornton.

Mr. THORNTON. It may have been an example of misspeaking, but I wonder about the statement "George wanted to stand between him and his Commissioner"—is there any indication as to who that "him" is? Did he say "him" instead of "me"?

Mr. DOAR. It is his testimony; that is the way it was recorded—"him".

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. I do want to emphasize in view of Father Drinan's comments that this was an evenhanded policy. They did not postpone audits only on Republicans. It was a policy to postpone sensitive inquiries—that is, persons who were prominent, politically prominent, that sort of thing, and whether they were Republicans or Democrats, that was immaterial, and Mr. Walters emphasized that with us. However, the policy in the Department was that if postponement for this reason would indicate a loss of revenue, they went ahead with the audit, regardless of the so-called sensitivity.

The CHAIRMAN. Does the evidence so indicate, that it was conducted in an evenhanded manner?

Mr. JENNER. Yes.

The CHAIRMAN. According to the data that you have compiled and presented?

Mr. JENNER. That is correct, sir.

Mr. McCLORY. Mr. Chairman, may I just inquire?

What you say, Mr. Jenner, and you, Mr. Sutton, is that embodied in any affidavit or any evidence that we have before us? I think that is extremely significant, the agreement between the Commissioner and the assistants with respect to this policy. That policy was probably

not reduced to writing, but if Mr. Walters stated that that was the policy, I think it would be important to know.

Mr. SUTTON. Mr. Walters explains the policy in his affidavit, paragraph 6, on page 3 of his affidavit. That is 21.2. Paragraph 6—page 6 of tab 21.2.

•Mr. McCLORY. Would you read that to me?

The CHAIRMAN. In the middle of the paragraph, paragraph 6, Mr. Doar.

Mr. EDWARDS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Doar, has an inquiry been made of the Internal Revenue Service as to what their records reflect for this entire period as to the number of requests made by the White House? Is it possible that there are a number of items that we do not know about?

Mr. DOAR. We have not made that request because we have not been able to get any information from IRS because of their confidentiality statute.

Mr. EDWARDS. So the information that we get is not directly from them, it is——

Mr. DOAR. From the joint committee or from other sources, from former——

Mr. EDWARDS. Does the IRS have an index on items like this, requests from the White House for audits?

Mr. DOAR. I cannot tell you that; I do not know.

Mr. EDWARDS. In other words, we do not know whether or not there are 50 or 100 more cases like these sitting in the files over there, and we do not know if there are none?

Mr. DOAR. We do not know that.

Mr. EDWARDS. Well, Mr. Chairman, it seems to me that that is of some importance, and if the information is there, that we are entitled to it.

The CHAIRMAN. Well, you know that we are precluded from receiving this information unless the resolution of the committee is adopted to receive this and I do not know that this is specifically an area that we ought to be going into unless the material that is already before us does not seem to be sufficient.

Mr. EDWARDS. Well, the material before us is impressive, but it is incomplete. I think perhaps the staff could consider this.

Mr. DOAR. We will do that.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. I just want the record to show, in view of the point I made about a possible criminal statute that would apply to this. I would refer the committee to title 26 of the Internal Revenue Code, section 7212, which specifically is in the area of attempts to interfere with the administration of Internal Revenue laws, and which is a felony specifically stating "Endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity." And it goes on, "obstructs, impedes, or endeavors to obstruct or impede the due administration of this title." It is specifically stated and it provides a fine of \$5,000 or imprisonment for not more than 3 years.

I would say that in the area of the auditing specifically of Billy

Graham and John Wayne, which is the point I raised, as well as the year preceding 1972, since this was done in the year 1971, that in fact, we should have and should take note of section 7212, specifically the criminal statute for attempting to interfere and impede with the administration of the Internal Revenue laws. I would like the record to show it.

The CHAIRMAN. Well, the record will show it. I hope, though, that the member is not suggesting that because of those criminal statutes, we are under an obligation to make a determination whether or not there has been a violation, except to consider the facts as they are here and coming to our own conclusion.

Mr. MEZVINSKY. Excuse me, Mr. Chairman. What I mean to raise is in fact to show the relevance of the material as well as also to indicate not only regarding the members that were here, but the question specifically of the President supposedly being directed in this area. I think it is on target, is what I am saying.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Did you comment, Mr. Sutton, on when that policy of postponing sensitive audits started and whether it is continuing?

Mr. DOAR. I do not have any idea.

Mr. OWENS. Do we know whether that was a longstanding policy?

Mr. SUTTON. I believe Mr. Walters stated that there was a decision that he and his Assistant Commissioner reached sometime early in the year of 1972, and although he did not know specifically, I believe he stated that it was his impression that that had been done in past years, although he had no direct knowledge of that.

Mr. SEIBERLING. Mr. Chairman, I respectfully suggest that we are starting to repeat ourselves here and we are getting hopelessly bogged down and I suggest we get on with the show.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, sometime back, there was a—I have a recollection of a White House memo, a White House log that had Larry O'Brien as a topic of conversation. Has there been any connection of the Internal Revenue inquiry of O'Brien with any communication of those facts or report on the inquiry to the President?

Mr. DOAR. There is some information that follows on in the next couple of paragraphs about that.

The CHAIRMAN. Mr. Doar—Mr. Jenner, go ahead.

Mr. JENNER. Mr. Chairman, I have two pertinent matters.

When we interviewed Secretary Shultz, one of the things he said to us, and I overlooked this when I was reporting earlier, he told us of conferences between himself and Mr. Ehrlichman dealing with sensitive case reports and that sort of thing; but particularly with respect to the O'Brien matter, that during at least one of Secretary Shultz' conversations with Mr. Ehrlichman on this subject—that is, Mr. Ehrlichman's requests with respect to the O'Brien audit—that "Mr. Ehrlichman told me that the President was asking him"—Ehrlichman—"for the information."

The second item is that early this morning, I interviewed Mr. Kalmbach—

The CHAIRMAN. Mr. who?

Mr. JENNER. Mr. Herbert Kalmbach, who is appearing before the grand jury at 10 o'clock this morning and who will be sentenced in connection with his plea of guilty on Monday. He related the following to us, which he has already related to the Senate select committee and to the Special Prosecutor. My notes are in my own shorthand, so while I am accurate, I am paraphrasing.

In September 1972, at about this time, around September 10 or September 12, Mr. Kalmbach was at his country club in Los Angeles. There was a broadcast that he was receiving a call from Washington. He answered the phone and it was Mr. Ehrlichman. Mr. Ehrlichman said to him, is your phone secure?

Mr. Kalmbach said, well, it goes through a switchboard; I will call you back.

So he went to a phone booth in the country club quarters where there was a pay phone and he returned the call to Mr. Ehrlichman. We will be able to obtain the exact date, because he used a DNC credit card in making the return call, he so advised me this morning.

Mr. Ehrlichman said to him: "Herb, I want you to go to Las Vegas and see Hank Greenspun"—Mr. Greenspun is the owner and publisher of the Las Vegas Sun, I believe the title of it is—"and make a plant with respect to Larry O'Brien, and I will give you the data with respect to Mr. O'Brien's failure to report a large amount of income. Do you have a pencil and will you take this down?" And he gave a series of years and also amounts and the name of a company from which the income allegedly had been received by Mr. O'Brien.

Mr. Kalmbach called his partner, Frank DeMarco, and he said, "This corporation is unfamiliar to me, would you check it out for me?"

Mr. DeMarco checked the corporate register of California and he could not find the corporation.

Mr. Kalmbach became concerned about it, and since they could not check out the corporation, Mr. Kalmbach then decided not to do anything further.

About 2 weeks later, at apparently a social affair here in Washington, Mr. John Mitchell, in an aside to Mr. Kalmbach, said, "Why aren't you going ahead on that?"—on the O'Brien matter.

Mr. Kalmbach's response was, sotto voce, "Well, I really do not have enough information."

I will prepare a summary statement and as I said to Mr. Kalmbach, we do not like to have our witnesses sign things that we prepare and some of our committee members are sensitive about that, and over the weekend, will you prepare your own summary and statement of the conference I had with you this morning, which he agreed to do. He was quite cooperative—not necessarily particularly to us, because he had already, as he told me, he had given this information to the Senate select committee, particularly Mr. Lenzner, and also to the Special Prosecutor.

The CHAIRMAN. Will you make that available for the committee as an addendum?

Mr. JENNER. Yes; we will.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Mr. Jenner, what did he mean, make a plant in Las Vegas?

Mr. JENNER. Thank you. I asked him expressly and he said make a plant was to have Hank Greenspun, whom he knew, by the way, to place, to plant, place a story in the Las Vegas Sun that Mr. O'Brien was under investigation for failure to report substantial amounts of income.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. I remember Greenspun's name bouncing up once before as a possible surveillance of some sort with the plumbers unit. Am I correct in that?

Mr. DOAR. That was with the Liddy operation, to go out and try to break into Greenspun's safe. There are allegations that that was one of the things that they intended to do and they may have made a trip to Las Vegas. As to whether they actually attempted to break in or not, it is murky. We have not been able to establish that.

Mr. BUTLER. This is the same guy, then?

Mr. DOAR. Same man.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Would you tell us what relationship Mr. Kalmbach had with Greenspun? How would he be able to plant a story with Greenspun?

Mr. JENNER. Mr. Kalmbach explained to me he had known Mr. Greenspun, both in connection with legal matters—he did not represent him, but he had occasion to be in Las Vegas and had become acquainted with Mr. Greenspun. And in connection with fundraising activities, he also had become acquainted with him.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Before you proceed, Mr. Doar, do you have a 4-minute tape that we are going to listen to?

Mr. DOAR. Yes.

The CHAIRMAN. At what point will that be coming?

Mr. DOAR. Page 24—paragraph 24.

Mr. SEIBERLING. Let us move along.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I am not going to pursue this, but I am wondering did you do an in-depth interview with Mr. Kalmbach? I wonder whether you inquired as to whether he had ever received a telephone call from Mr. Haldeman indicating that Mr. LaRue was going to spill his beans?

Mr. JENNER. Congressman Railsback, I did not do that this morning. I confined myself to this particular incident because it involved Mr. O'Brien. However, heretofore, we have conducted a lengthy, in-depth interview of Mr. Kalmbach. Now, at the moment, I do not recall whether we went into that. I assume we had because we spent hours with him.

Mr. RAILSBACK. Let me just say that I, as one member, think that that is very significant. I know it is entirely unconnected to this line, but I personally think that is very important.

Mr. DOAR. Item 22.

Mr. SUTTON. Walters stated that on September 11, 1972, he went to Dean's office. Dean gave Walters a list of McGovern staff members and campaign contributors and requested that the IRS begin investigations or examinations of the people named on the list. The names on the list of McGovern staff members were the same as the names on the list of McGovern staff members identified in paragraph 9. Walters' notes of the meeting state that JE asked to make up the list to see what information could be developed and that Dean had not been asked by the President to have this done. Walters has stated that he advised Dean that compliance with the request would be disastrous for the IRS and for the administration and that he would discuss the matter with Secretary Shultz and would recommend to Shultz that the IRS do nothing with respect to the request.

Mr. DOAR. The notes of Johnnie Walters are at 22.2. You will see at No. 2 there is the reference to JE, and No. 3 is "J Dean has not been asked by P to have IRS work and he does not know whether P has asked directly that any of this be done." No. 23.

Mr. SEIBERLING. Mr. Chairman, point of clarification here. The tab states that Walters' notes say that Dean had not been asked by the President to have this done and I just wonder if, to be complete, it should not somehow indicate the rest of that sentence, which says he did not know whether the President had asked directly.

Mr. DOAR. We will check that.

Mr. JENNER. The reference in the sixth line to paragraph 9—paragraph 22, the sixth line, there is a back-reference to paragraph 9. You will find that report, that document, at tab 9.7.

You will find also when you look at it that the material that is blanked out in three of the pages on tab 22.3 does appear on tab 9.7. So if you want the right-hand side of the page, you will find it if you go back to 9.7.

Mr. DOAR. Paragraph 23.

Mr. SUTTON. Walters has stated that on September 13, 1972, he discussed with Secretary Shultz the list given him by Dean, showed Shultz the list and advised Shultz that he believed they should not comply with Dean's request to commence examination or investigation of the people named on the list. Shultz told Walters to do nothing with respect to the list and Walters put it in his office safe.

On July 11, 1973, Walters turned the list over to the Joint Committee on Internal Revenue Taxation.

On December 20, 1973, the staff of the Joint Committee issued a report stating that it found no evidence that the returns of any persons on the list were screened as a result of White House pressure.

Mr. DOAR. Tab No. 24.

Mr. SUTTON. On September 15, 1972, from about 5:23 until about 5:27 p.m., the President met with Haldeman and discussed, among other things, Dean's working through IRS. At about 5:27 p.m., Dean joined the meeting and from about 5:27 to about 6 p.m., the President, Haldeman, and Dean had a discussion.

The committee has received tape recordings of these conversations.

Mr. DOAR. Mr. Chairman, we would like to replay the first 4 minutes of that conversation, because it relates to the matter that is before us this morning.

It also relates to the last 17 minutes of the conversation that we do not have that is going to be referred to in the next tab and as a basis of the request by the staff that a subpoena be issued for that particular tape recording.

The committee may remember that when we made copies of the tapes down at the White House, inadvertently, we made copies of 12 extra minutes of a tape on the 15th of September. Mr. Jenner said that I made some implication that we made the extra. There was no such implication intended. We were part of the procedure. The Secret Service people set the tape. No one is suggesting that we did anything improper by securing this. I advised Mr. St. Clair about it as soon as we learned about it.

You have heard this before.

[Whereupon a tape recording of a meeting between the President and H. R. Haldeman, September 15, 1972, from 5:23 to 5:27 p.m., was heard.]

The CHAIRMAN. I would like to advise the members that there is a quorum call on.

Mr. COHEN. On the middle of page 2, where the President indicates it is too quick to meet with the finance group, perhaps Monday or Tuesday—what does that mean, do you know?

Mr. DOAR. No.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. On that same point, in listening to this, it almost sounded as if he was not talking to Haldeman, but might have been talking to a secretary or aide who had come in and he was maybe going over his schedule. Is that the impression you get on that particular paragraph Mr. Cohen alluded to? It seems to be out of context with whatever they were talking about.

Mr. DOAR. I was—that thought came to my mind with respect to this particular paragraph.

Mr. HOGAN. Thank you.

The CHAIRMAN. Why not see if we cannot get on with this? I am checking to find out whether or not this is a quorum call preceding the consideration of one of the bills that has come out of Banking and Currency, but immediately after that, there is going to be a Flag Day observation.

I understand it is Flag Day first, so this quorum call apparently is for the purpose of getting the assemblage together to observe Flag Day.

Frank Aaron is also going to be on the floor, so I suppose members would want to know that and salute the great ballplayer.

Why do we not continue until the second bells, then break for the quorum call?

Mr. DOAR. Paragraph 25.

Mr. SUTTON. From approximately 6 p.m. to approximately 6:17 p.m. on September 15, 1972, the President, Haldeman, and Dean continued their meeting. The committee has not received a tape recording of this portion of the conversation. Haldeman and Dean have testified that at the September 15, 1972, meeting, there was a discussion of taking steps to overcome the unwillingness of the IRS to follow up on complaints.

According to a memorandum by Senate select committee Minority Counsel Fred Thompson, Special Counsel to the President J. Fred Buzhardt has stated that during the September 15, 1972, meeting, Dean reported on the IRS investigation of Lawrence O'Brien.

On May 28, 1974, the Watergate Special Prosecutor moved that Judge Sirica turn over the recording of this portion of the conversation for presentation to the appropriate grand juries on the basis that the recording was relevant to alleged White House attempts to abuse and politicize the IRS, including unlawfully attempting in August and September 1972 to have the IRS investigate Lawrence O'Brien.

On June 12, 1974, Judge Sirica granted the motion and ordered that the recording of the conversation from 6 to approximately 6:17 p.m. be made available to the Special Prosecutor.

Mr. JENNER. Mr. Chairman, a week ago tomorrow, Judge Sirica invited us to attend a hearing before him, in which he wished to report, among other things, on his having listened to the 17½ minutes of tape and to report whether he would reconsider, had reconsidered his judgment, previously given, that the limited portion of that tape that he had indicated was all that was relevant. The Special Prosecutor had made a motion stating that there was IRS abuse material in that 17½ minutes and would the court please reconsider. Judge Sirica announced in open court that he had listened to the additional 17½ minutes, that when he examined the tape theretofore he was thinking solely of Watergate and that he had not considered the matter of the possible IRS abuse; that having listened to the tape again, he wished to not necessarily reverse himself, but to state in the light of the fact that he now had his attention concentrated, that substantially all of the 17½ minutes did relate to that. He indicated, I think, the last pages, 13, 14, and 15 of a transcript of that tape did not relate to IRS abuse.

At that time, Mr. St. Clair was present, and he tendered the transcript to Mr. St. Clair to read and adjourned court for half an hour to receive Mr. St. Clair's response as to whether, after consulting with the President, the President would have no objection to the release of that tape. Mr. St. Clair, of course, responded that he had read it, that he would draw it to the President's attention, and would report back to the court.

As I understand it, while that report was to be made Monday, it has been deferred until tomorrow.

The CHAIRMAN. The committee will recess until 2 o'clock.

[Whereupon, at 12:15 p.m., the committee recessed to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. Come to order. Mr. Jenner.

Mr. JENNER. Mr. Chairman, I have a minor correction to make with respect to the status of the 17½ inches of the tape before Judge Sirica—minutes, not inches. Mr. St. Clair reported on Monday as requested by Judge Sirica as to what the decision of the President had been. He reported that the President's position was that he would oppose the delivery of the 17½ minutes of tape to the Special Prosecutor.

He allowed until Friday—that is, until tomorrow—for Mr. St. Clair to perfect his appeal to the Court of Appeals and to obtain a stay until the time that particular aspect could be presented to the Court of Appeals.

The CHAIRMAN. Thank you, Mr. Doar.

Mr. DOAR. When we left, recessed at noon, Mr. Chairman, we were talking about paragraph 25. I direct the committee's attention to paragraph 24.4. There is the affidavit of Fred Thompson, the minority counsel of the Senate select committee. In his affidavit, he relates how he was advised by Mr. Buzhardt about certain oral communications between President Nixon and John Dean and that he made notes of that conversation. The notes of the conversation are found on page 1796, the third page of that memorandum. It refers to the meeting on September 16. It says: "Dean reported on the IRS investigation of Larry O'Brien. Dean reported on Watergate indictments."

Then in 25.5, there is an affidavit of Leon Jaworski, which is at page 3, unnumbered page 3, with respect to a motion which Mr. Jenner has described to you, called a motion for reconsideration. That is the motion to ask the court to reconsider his ruling that the final 17 minutes of the tape of September 15 were privileged and not relevant to the Watergate investigations.

Mr. Jaworski says, on page 3 of his affidavit, paragraph 4:

Allegations concerning the White House's attempts to abuse and criticize the IRS have been and are the subjects of investigation by both the Federal grand jury empaneled on August 13, 1973, and the Federal grand jury empaneled on January 7, 1974. Insofar as is relevant here, those investigations have focused on allegations: (1) That in September 1972, the White House presented lists of individuals ("enemies") to the IRS with the direction that they be audited or otherwise harassed; and (2) that in August and September 1972, the White House unlawfully attempted to have the IRS investigate Mr. O'Brien. Evidence assembled by this office, much of which has been presented before the grand juries, substantiates both of those allegations. This evidence also indicates the likelihood that on September 15, 1972, the President did in fact have discussions with Mr. Dean and Mr. Haldeman, concerning those matters. If the court desires, a detailed review of the witnesses can be submitted for in camera examination.

Then in paragraph 5, Mr. Jaworski refers to the 4 minutes on the tape that the committee heard this morning.

Then in paragraph 6, Mr. Jaworski indicates why these matters are relevant to the matters that are pending before the court in—not why these matters are relevant, but why these matters might be relevant in the case of *United States v. Mitchell*.

The affidavit and the motion were the basis of the order which Judge Sirica has entered which Mr. Jenner has already reviewed for you. No. 26.

Mr. McCLODY. Mr. Chairman, could I inquire?

The CHAIRMAN. Mr. McCloidy.

Mr. McCLODY. Would you explain that last part? Do I understand that there is a connection between the IRS pressures and the Watergate break-in?

Mr. DOAR. That is what the affidavit of Mr. Jaworski appears to say.

Mr. McCLODY. Could you explain that to me? Do you understand it?

Mr. DOAR. Well, he says that—on page 5 he says they may well bear on the possible motives of one or more of the alleged conspirators in connection with the Watergate break-in and alleged coverup.

Mr. McCLODY. What page?

Mr. JENNER. Page 5.

Mr. McCLODY. Would that mean that one of these Mexicans or someone might be motivated in participating in the break-in because of—

Mr. DOAR. No; it is the conspiracy to obstruct justice, not the break-in. The case that they are talking about is the *Mitchell* case, which is the obstruction of justice case, not the break-in.

Mr. SEIBERLING. Would the gentleman yield?

Mr. McCLODY. Yes; I yield.

Mr. SEIBERLING. The office broken into was Larry O'Brien's and there have been allegations in the press that one of the reasons was to see if they could find out something on Larry O'Brien that related to this tax matter. So that is—

Mr. McCLODY. Do we have any information that would be a basis for making that kind of claim in the affidavit, that he would have some financial data or something in the Democratic National Headquarters that would help to use the IRS improperly?

Mr. DOAR. We have not—I do not have that information.

Mr. McCLODY. All right, thank you.

Mr. DOAR. No. 26.

Mr. SUTTON. Walters has stated that on or about September 25, 1972, Dean telephoned him and inquired as to what progress had been made with respect to the list of McGovern campaign workers and contributors which he had given to Walters on September 11, 1972. Walters has stated that he informed Dean that no progress had been made; that Dean asked if it might be possible to develop information on 50, 60, or 70 of the names; and that Walters responded that, although he would reconsider the matter with Secretary Shultz, any activity of this type would be inviting disaster.

Walters has stated that on or about September 29, 1972, he discussed Dean's request with Shultz and that he and Shultz agreed that nothing be done with respect to the list. Walters has stated that he did not furnish any name or names from the list nor request any IRS employee or official to take any action with respect to the list.

Mr. DOAR. In connection with our interview of Mr. Walters, he furnished us handwritten notes of his interview with John Dean. They are at 26.2. He had theretofore furnished them to the Joint Committee on Internal Revenue Taxation. You will see the retyping of those handwritten notes, as well as the actual Xerox of the handwritten notes themselves.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Doar, is there any evidence that Mr. Walters' affidavit here at 26.2 is incorrect, that he did in fact do anything that he says he did not do or anything of that sort?

Mr. DOAR. No; there is not.

Mr. DENNIS. Thank you. That seems to be the conclusion which this report of the joint committee comes to, also. It is practically a seriatim exoneration, as I read it up here at the desk as you have been going along, on most of these allegations.

Mr. JENNER. Mr. Dennis, we interviewed Mr. Walters twice and

the affidavit that he prepared, which is under tab 26.1, and also I referred to it in an earlier tab—that affidavit does square with our two interviews with him.

Mr. DENNIS. Thank you both.

Mr. DOAR. Paragraph 27.

Mr. SUTTON. On March 13, 1973, the President met with Halde-
man and Dean. During the conversation, the President and Dean
discussed, among other things, obtaining information from the IRS.

Mr. DOAR. Rather than distribute the brief 1-page transcript where
this occurred, I wonder if you could mark your page when the tran-
scripts are distributed to you as page 9 of the transcript. During that
rather long conversation, which I think took about an hour, on page 9,
the President asked John Dean, "Do you need any IRS stuff?" Then
there was "(unintelligible)." Then Dean said, "Not at the —," then
it stopped, then a waiter interrupted, and the waiter said, "Would you
care for some coffee?"

Then Dean said, "No, thank you, I am fine." Then he said "There is
no need at this hour for anything from IRS, and we have a couple of
sources over there that I can go to."

Mr. BROOKS. Mr. Chairman, there is a quorum call and I wonder if
we could continue this after that.

The CHAIRMAN. Yes; we will.

Mr. McCLODY. Did Dean get the coffee?

[Recess.]

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I was reading from the March 1 transcript, page 9. I will
read it, it is so short, again.

The President said to John Dean: "Do you need any IRS stuff?"
There was an unintelligible portion. And Dean answered: "Not at
the——"

Then a waiter interrupted and said, "Would you care for some
coffee?"

Dean said, "No thank you, I am fine. There is no need at this hour
for anything from IRS, and we have a couple of sources over there
that I can go to. I don't have to fool around with Johnnie Walters
or anybody, we can get right in and get what we need."

The President said, "Talk to Elliott Gompers."

The CHAIRMAN. Who is Elliott Gompers?

Mr. DOAR. We do not know that name, maybe it is a misquote.
Paragraph 28.

Mr. SUTTON. On May 2, 1973, the Center on Corporate Responsi-
bility, Inc., filed suit charging that it had been unlawfully denied
tax-exempt status because of selective treatment for political, ideologi-
cal, and other improper reasons having no basis in the statute and
regulations. On December 11, 1973, the U.S. district court held that
the tax exemption had been unlawfully denied. The court stated that
its ruling was based in part on the failure of the White House to
comply fully with discovery orders. The court found that the influence
of political intervention had been unmistakably raised.

Mr. DOAR. Judge Richey was the district court judge in that case.
That concludes this part of our presentation, Mr. Chairman.

The CHAIRMAN. Ms. Holtzman?

MS. HOLTZMAN. In the Joint Committee on Internal Revenue Taxation report, on page 13 of that report, there is reference to a number of instances in which requests were made by White House personnel regarding favorable treatment for friends of the White House. In the conclusion of that paragraph—it is the first full paragraph on the page—it says: "Questions may be raised as to whether this was appropriate action." I think they are referring both to failure of the Government to prosecute a case involving a friend and a communication from the Commissioner of Internal Revenue to a District Director regarding a friend's return.

I wonder if you could tell us whether you can elaborate on this comment in the Joint Committee report? Have we received in your presentation anything regarding this paragraph?

MR. SUTTON. No; we have not. I believe, as the report reflects, the Joint Committee referred back certain cases for the IRS to reexamine. Because of the statute preventing disclosure, we are not permitted access to these files or to know which persons' returns were dealt with in that way.

MS. HOLTZMAN. Well, along with the point raised previously by Mr. Edwards, it would seem to me that if the Joint Committee has questions about the appropriateness of this action, the committee staff ought to consider the desirability of a resolution so we can get this information. Because there seems to be a clear inference here of the White House influencing the Internal Revenue Service, I would appreciate that. Thank you.

MR. COHEN. Mr. Chairman?

THE CHAIRMAN. Mr. Cohen.

MR. COHEN. Mr. Doar, at tab 28, we have the Center on Corporate Responsibility. Were they included in any of the lists furnished to the Joint Committee on Internal Revenue Taxation as being an enemy or one who would be persecuted or prosecuted for ideological reasons?

MR. SUTTON. Not on any of the lists we have.

MR. WIGGINS. Mr. Chairman.

THE CHAIRMAN. Mr. Wiggins.

MR. WIGGINS. Counsel, there is not enough of that case to understand this holding fully, but the court clearly gave judgment to the plaintiff not by reason of finding of improper political influence, but merely imposed sanction on the plaintiff for failure to produce documents. Is that true?

MR. DOAR. I think that is true.

MR. BROOKS. Mr. Chairman?

THE CHAIRMAN. Mr. Brooks.

MR. BROOKS. Counsel, do we have a copy of that transcript of this tape recording that you were reading from as we went to the quorum call, 27.1, page 9 of it?

MR. DOAR. Yes.

MR. BROOKS. Could we take a look at that?

MR. DOAR. We have it right here for you. I thought it was so short, we would not—we have it here for you.

MR. BROOKS. Good. I will give it back to you.

MR. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, a couple of points.

As I understand it, the IRS has had established procedures whereby they are supposed to record anyone who looks at a tax return. Do you know whether or not those procedures were followed regarding Goldberg and the six entertainers and the other people that were supposedly given—

Mr. SUTTON. Again we have no way of determining that because we do not have access to the files of the Internal Revenue Service.

Mr. MEZVINSKY. OK. The other two points are: One, there was no mention in this presentation about the tax treatment given regarding the merger activities of ITT whereby there was a ruling that was made within 7 days, and then within this last year it was overruled and overruled retroactively. Was there any reason why that activity was not discussed during the presentation as to the favorable tax ruling on ITT and then the subsequent reversal of that action?

Mr. SUTTON. We found no evidence from the information that we had available to us that there was any improper or any White House pressure which had to do with that ruling, although again we did not have access to the IRS files relevant to that matter.

Mr. MEZVINSKY. So I gather you have the records there, but the conclusion of the staff is that there was no indication of White House involvement, is that right?

Mr. SUTTON. From the information available to us, that is right.

Mr. MEZVINSKY. The third item I want to get for the record is, as I understand, the Bebe Rebozo audit concerning the friend of the President, the record shows—exactly what can we conclude concerning that as to the activities surrounding the White House as to the Bebe Rebozo audit and stopping of that audit? We have very little basically on that. Do we have more, supposedly up at the hotel, that Members can look at or is there anything else concerning that activity and contacts with the Internal Revenue agents concerning the Bebe Rebozo audit?

Mr. SUTTON. In our interview with former Commissioner Walters, he explained to us that consistent with the policy which they had established during 1972, the names of Mr. Rebozo and Donald Nixon came to their attention as persons who should be investigated about the same time that Mr. O'Brien's name came up. Because of the policy they had, they delayed the investigations of Mr. Rebozo and Donald Nixon until after following the election, sometime in 1973.

Mr. MEZVINSKY. But is it my understanding that, in the testimony given before the Watergate Committee, it was that the White House was fully kept informed as to the IRS investigation of Mr. Bebe Rebozo. That testimony has been given to the Senate Watergate Committee.

Mr. DOAR. We do have some additional information with respect to the audit of Mr. Rebozo and the timing of it and the matters that the IRS agents looked into. But we have not gotten it adequately prepared to present to you at this time. It has not been completely investigated—conclusively investigated.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I wonder if this might be an appropriate observation to make with regard to the staff report of the Internal Revenue Service. I know that in cases, sometimes Members of Congress are admonished to be careful about intervening or applying congressional pressure because it has an adverse effect. I would gather from pages 13 and 14 particularly, if we make an analysis of the intervention against so-called enemies or in behalf of the so-called friends, the report indicates that instead of helping out their friends, they hurt them and instead of hurting their enemies, they seem to have at least gotten them more favorable treatment.

That appears, too, does it not, from that study?

Mr. DOAR. It does.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. [Classified material deleted.]

Mr. SUTTON. [Classified material deleted.]

Mr. WALDIE. [Classified material deleted.]

Mr. SUTTON. There is no evidence of that. We do not know who prepared this memorandum. It was unsigned.

Mr. WALDIE. Where did we get it?

Mr. SUTTON. From the Senate select committee.

Mr. WALDIE. Where did they get it? If we do not know anything about it, why is it in this book?

Mr. SUTTON. We know that it was attached to a cover memorandum written by John Dean to a number of people.

Mr. WALDIE. Can we presume that John Dean prepared it?

Mr. DOAR. No; we do not presume that.

Mr. WALDIE. Well, why do you include it in the book? What is the authenticity of it for me trying to understand what this is about?

Mr. DOAR. We include it in the book because it indicates that someone examined the returns of a taxpayer and gave to John Dean information about a taxpayer that was obtained from the returns.

Mr. WALDIE. But we have not any idea who reexamined those returns?

Mr. DOAR. No; we do not.

Mr. WALDIE. Is there any wrongdoing for John Dean to have received information from someone who examined somebody's returns? Do we know that the examination was even improper in [classified material deleted].

Mr. DOAR. Well, the examination of returns, Congressman, is so carefully controlled by the IRS that an instance where you get an unsigned memorandum such as this that does not appear to be in any way in the ordinary course or under the normal regulations of the IRS—

Mr. WALDIE. But does it come from the IRS?

Mr. DOAR. We do not know that.

Mr. WALDIE. Well, then, why do you say it does not appear to be in the ordinary course of business from the IRS? If it did not come from them, of course it would not appear.

Mr. DOAR. That is right. That is right. The returns could have been examined somewhere else.

Mr. WALDIE. Well, I do not want to prolong this, because—is it your

assumption that it came from the IRS and that is why it was not signed or identified?

Mr. DOAR. We made the assumption. I believe, that it came from the IRS. That assumption may have been incorrect.

Mr. SUTTON. I think the assumption would be that the information came from the IRS and the memorandum was prepared by someone in the White House.

Mr. WALDIE. Well, if it was prepared by someone in the White House, then someone in the White House would also have access to those phone logs, those phone tolls.

The reason I am pressing this point is because it would seem to me to be unlikely that it would be someone in the IRS that prepared this memo, because they would not have access to phone tolls, would they, in the IRS?

Mr. DOAR. They could.

Mr. WALDIE. They could?

Mr. DOAR. In the course of an investigation, they might do that, in the investigation of the tax periods. It is probably unlikely, however.

Mr. WALDIE. Thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Going back to 28.1, the opinion by Judge Richey, on page 871 of the opinion, footnote 18 says:

Mr. Buchanan's testimony referred to a memorandum from himself to the President, dated March 31, 1971, which discussed the administration's intent to use the IRS to combat those "anti-Administration institutions like the Stern Foundation."

Is that in the papers we have been over or have we not seen that memorandum?

Mr. DOAR. No; that memorandum is not among the papers you have been over.

Mr. SEIBERLING. Does the staff have that memorandum?

Mr. DOAR. Yes; it does.

Mr. SEIBERLING. Does that not have a distinct bearing on the material we have been through, particularly since it was submitted to the President?

Mr. DOAR. Well, in going through the material, it was my judgment that it was not sufficiently pertinent to include it in the material.

Mr. SEIBERLING. Well, is it not at least as pertinent as some of the other material we have had? Is it your thought that it is merely cumulative, or what?

Mr. DOAR. No; I thought that—

Mr. SEIBERLING. It certainly would tend to show that the President as early as March 1971 knew about the intent to use the IRS.

Mr. DOAR. I think, Congressman, that probably the best answer would be to just furnish you the memorandum and furnish it to the members of the committee and let them make up their own minds about it.

Mr. SEIBERLING. I would request that that be done.

The CHAIRMAN. Does that complete the presentation of the IRS?

Mr. DOAR. Yes; it does.

The CHAIRMAN. If there's not any further questions with relation to that book we will proceed with the presentation of the brief on impoundment. I suggest that it would be probably best to have Mr.

Doar, together with his associates, summarize for us the brief on impoundment which has been presented, and then they would be available for questions on the part of the members of the committee.

Mr. Latta?

Mr. Latta. While we are getting ready to take up impoundment, if we have a break here for a second or two, I want to raise a question. I might have missed one of these sessions where you discussed memos that were being prepared by individual staff members that might be available to the members. I have reference to this memo that is referred to in last night's Star prepared by a member of the committee staff, William P. Dixon.

Now, I do not know anything about this memo. Are they preparing individual memos, and if so, why are we not getting copies of them?

The CHAIRMAN. Well, those memos were prepared at the request of the individual members, and none of those members, or none of those memos were prepared for distribution for the committee as such. But, any individual member who sought some assistance from the members of the staff of the Judiciary Committee have always had the opportunity to make those requests.

Mr. Brooks. Would the gentleman yield?

Mr. Latta. Are they being prepared for members of the press?

Mr. Brooks. Would the gentleman yield?

The CHAIRMAN. They are not prepared for members of the press.

Mr. Latta. Well, are these confidential documents that should not be released to the press?

The CHAIRMAN. I believe that they are, although my review of some of them would indicate that the major number of the memos are memos that deal with material that is in the public domain already.

Mr. Brooks. Mr. Latta, would you yield?

Mr. Latta. I will be glad to yield to my friend from Texas.

Mr. Brooks. To clarify this a little bit, I never saw any such memos until yesterday.

Mr. Latta. I have not seen any until today.

Mr. Brooks. I have not made any request for any, and I did not get any, and I didn't feel like, you know, that as a member, that I had been deprived of any information. Just a staff member, if someone had asked him to do something for them, to collate something, and I think there is nothing wrong in it. And I am glad they did it, and I hope they were helpful to the member. It is not a matter of secrecy or a matter of failure to give every member fair treatment. I do not feel like I have been mistreated.

Mr. Latta. Well, I don't know whether I have been mistreated or not because I did not even know they were available.

Mr. Brooks. That is the point. I did not even know of their existence until yesterday.

Mr. Latta. Well, you are 1 day ahead of me.

Mr. Dennis. Mr. Chairman, since the question has been raised by the gentleman from Ohio, I learned of them first in the press, as evidently he did, and I assume that they were not supposed to be in the press. What, if anything, is being done about the fact that they were in the press?

The CHAIRMAN. Well, I have instructed the committee staff not to prepare any further memos.

Mr. Dennis. Well, that is one way to keep them out of the press, I guess. About the only way.

The CHAIRMAN. Mr. Doar.

MR. DOAR. Mr. Chairman, members of the committee, with Mr. Jenner and I today are Mr. William Weld at Mr. Jenner's right, who is a graduate of Harvard Law School, and Mr. John Labovitz on my left, who is a graduate of the University of Chicago Law School. Mr. Weld and Mr. Labovitz have been preparing and doing the research on this report on the impoundment of funds. And also here with us today is David Bennett, and Alan Schwartz of the staff, and they assisted in collating and collecting some of the factual material which we present to you this afternoon.

This memorandum, if you would look at the outline on the first page, is broken down into three major parts. In all it is 91 pages in length. And all but three of the pages deal with either factual or legal matters in connection with the impoundment.

Going first to the factual background, subsection B deals with the impoundment action of the present administration, and within that section, and particularly calling your attention to page 5 of the memo, there is a summary of the budgetary reserves as of particular times from January 29 through April 20. This is unspent money that has been appropriated, authorized and appropriated, by the Congress.

And then the next part of the factual background deals with statements by the President and other executive officers with respect to the President's role in impoundment.

And the last section deals with congressional actions dealing with impoundment during the present Administration.

In the second part of the presentation, involves impoundment as ground for Presidential impeachment, and that is broken down into three sections, subsections, one, precedent, and the second section constitutional arguments for impoundment as a ground for Presidential impeachment and then arguments presented on behalf of the Executive to justify the impoundments of the present administration.

And with the committee's permission, I would like Mr. Weld to summarize briefly the first part of the report dealing with the factual background, inasmuch as he is as familiar as anyone on the staff with all of the cases, all of the various kinds of impoundment situations that could arise, and the dollar amounts and the response of the Congress to various actions taken by the President in connection with impoundment matters.

MR. WELD. Mr. Chairman and members of the committee, in this memorandum the term impoundment is used to refer to all manner of executive deferral or failure to spend funds or contract authority which have been made available or appropriated by the Congress. I think it is probably important to keep in mind that the better portion of these amounts that you can see listed on page 5 consist of what are called routine budgetary reserves which are established as a matter of course by the Office of Management and Budget in the course of executing a statute, and that office is required by statute to apportion budgetary authority four times a year so as to guard against the necessity of incurring a deficiency.

The type of impoundment which is at issue in this inquiry is not the so-called routine budgetary reserve but rather the type of instance where the administration has terminated or substantially cut back on a program established by Congress. As a rough estimate, perhaps

30 or 35 percent of those total dollar figures that you see involve that type of impoundment.

The practice of impoundment began early in the Nixon administration. It did not appear overnight in the year 1973, but it reached its highest point in fiscal year 1973. The principal areas in which the so-called policy impoundments, as opposed to routine reserves, occurred where programs under the jurisdiction of the Department of Health, Education, and Welfare, programs operated by the Department of Agriculture, a program operated by the EPA, the Water Pollution Control Act Amendments of 1972, the statute involving the Federal Aid to Highway Act of 1968, and we have grouped the attempted dismantling of the Office of Economic Opportunity under this heading.

The amounts involved under the EPA statute, Congress appropriated \$18 billion, and by direction of the President, \$9 billion was allotted by the administrator.

Mr. SMITH. Is that billion dollars?

Mr. WELD. Billion, with a B.

In the HEW area, the dollar amounts were not nearly so large, but a number of programs there the Secretary declined to allot or obligate an amount of funds which was equal to the difference between the administration's budget proposal and the amount actually appropriated by Congress.

In the Agriculture area, there were four or five programs which were terminated by the action of the executive branch. These included rural environmental assistance, the rural electrification act, the water bank program and others.

In the highway area, the Secretary of Transportation withheld from obligation certain amounts which had been apportioned to the States.

In the OEO case, the administration proposed to spend the funds which had been appropriated for the purpose of winding up certain activities of the OEO, notably the community action organizations, rather than for the purpose of continuing them as Congress has appropriated.

The action by the administration in each of these areas was challenged in court suits, and in the great majority of those cases the actions were held to be unauthorized.

Mr. OWENS. Were they held in every single case unauthorized?

Mr. WELD. No, Mr. Congressman. There was one case in the District Court in California where the administration's position with respect to the amendment to the Water Pollution Control Act was upheld.

The CHAIRMAN. Might I inquire at this point, in those instances where the court has determined by final decree that the impoundment was unauthorized, has the administration in those cases taken any action on the impoundment funds?

Mr. WELD. The administration has appealed a few of those cases, but in cases where the administration has allowed the decree to become final and the judgment has not been stayed pending an appeal, the funds have been released.

Mr. DRINAN. Mr. Chairman? This may anticipate some problems at the end but is it really true as you say, that the administration has followed a decree of the court when it is finalized? I know of instances in several of those programs where that does not appear to be so. Are

you telling us that whenever it is challenged successfully that the administration has restored the program or has stopped the withholding of funds?

Mr. WELD. Well, to a certain extent, Mr. Congressman, my conclusion has to be based on inference because I infer from the absence of any material in the reported decisions finding that there has been a lack of compliance, I infer that the administration has complied.

Mr. DRINAN. Well, as the chairman asked, in the area of housing there are many programs which have been suspended and every single plaintiff has prevailed, as your brief indicates, and yet the housing programs are not being funded and they have the rationale that they do not allow applications to be accepted. So how does that stand up?

Mr. WELD. That is true, Father Drinan. But, in that case the order of the District Court for the District of Columbia was stayed by order of the Supreme Court of the United States pending appeal. The plaintiff in that case, after prevailing in the District Court, had sought a writ of mandamus to compel Secretary Lynn to process applications, and the administration resisted that petition and secured a stay of the judgment in the Supreme Court.

Mr. DRINAN. What about funds for medical schools and nursing education?

Mr. WELD. I believe some funds have been recently released under those.

Mr. DRINAN. The court said all funds must be released, and the medical schools have gone back into court and the nursing education schools, so your generalization is not true.

Mr. WELD. I am aware of two cases, Father Drinan, in which—

Mr. DRINAN. Well, this is a very essential point. I saw toward the end, and this is the heart of the whole matter, and you say, and I do not think you are able to prove it, as I hear you, you say on page 90 at the bottom that the administration has obeyed final court decrees directing the release of impounded funds. And you cannot verify the cases that I bring up.

Mr. WELD. Father Drinan, I am only aware of two cases in which the plaintiff has petitioned the court to hold the administration in contempt of court and in both of those cases the petition was denied. But, those were not in the medical college area.

Mr. DRINAN. Well, in these cases, and I am very familiar with them because they are in Massachusetts, the court to the best of my knowledge, in a final decree, said that all of the funds must be released and the administration released very small funds, and then would not go forward. Now, I would like—I don't want to prolong this but I would like to get some exact information as to the status.

The CHAIRMAN. There is a rolleall and the committee will recess until the members have answered the rolleall and we will return within 15 minutes and we intend to continue until 4:30.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Mr. DOAR. Bill, would you continue?

Mr. WELD. With respect to the role of the President in the actions that have been taken by the administration in the area of impoundment, various statements by the President and by the Office of Manage-

ment and Budget are included in this memorandum at pages 27 to 33. And they seem to indicate that there is no dispute that the responsibility for the impoundment policies of the administration is the President's.

During the present administration, a variety of approaches has been adopted by the Congress to deal with the impoundment actions of the executive branch. One approach has been the enactment of a reporting statute, the Federal Impoundment and Information Act, pursuant to which the Office of Management and Budget has now submitted six quarterly reports stating the amount of funds being held in budgetary reserves; that is, the amount of funds impounded, and giving the reasons for which each budgetary reserve was established. Those are the figures summarized on page 5 of the memorandum.

Another approach has been the addition of mandatory language to spending statutes indicating that it is the intent of Congress that the funds not be impounded.

Third, a couple of times Congress has placed specific limitations upon the amount of funds which could be impounded under a given statute. And probably the most notable example is the 1974 Labor-HEW appropriation bill which established absolute and percentage limitations on the amounts that could be withheld from obligation under that bill.

Most important have been the congressional efforts culminating in the Budget and Impoundment Control Act of 1974, which was approved by a House-Senate conference committee 1 week ago on June 5. And I think that the conference report was placed in the Record on Tuesday of this week and it is expected that the legislation will be presented to the House and Senate within the next few weeks. That legislation establishes budget committees in each House of Congress and a budget office which will perform for the Congress the task which OMB has performed for the Executive in the past. Title 10 of the bill is a collection of provisions designed to deal with the problem of impoundment in a comprehensive manner and it contains procedures requiring the President, whenever any impoundment is proposed, to transmit a report to Congress. In the event of a proposed rescission of budgetary authority, both Houses of Congress would have to approve this action before it would take effect, and in the event of a proposed deferral, either House of Congress would have a veto over the proposed action by the executive branch.

As to the practice in past administrations, impoundment in one form or another has existed since the time of President Jefferson. The example often cited in his administration is his deferral of expenditures for gunboats on the Mississippi and the reason that the expenditure of those funds was postponed was that the Louisiana Purchase intervened, rendering the territory friendly.

Many of the impoundment practices of past administrations are distinguishable from the practices of the present administration, either because the President's power as Commander in Chief or his special role in foreign affairs were arguably involved or because the size of the reduction in the program was not as great and for various other reasons which are set out in the historical section of this memorandum which begins at page 80.

There are one or two cases which do seem to constitute precedent for the practice of withholding funds for the purpose or the declared purpose of cutting the rate of inflation.

Ms. HOLTZMAN. May I ask a question?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Are those cases that you point to with regard to inflation, are those instances in which the impoundment arguably could have been authorized under the President's power as Commander in Chief or power to conduct foreign affairs?

Mr. WELD. As to one of them, Madam Congresswoman, the answer is yes. That was the action of President Franklin Roosevelt in deferring \$500 million of public works expenditures in 1941 and the reason given was that the expenditures were nonessential and would not contribute to the country's defense preparation.

The other example is from the administration of President Lyndon Johnson and involved a deferral of \$5.3 billion of low-priority programs for the purpose of curbing the rate of inflation, and that is perhaps the strongest precedent for the actions of the present administration.

Ms. HOLTZMAN. But the question I had, Mr. Weld, was whether any of these programs under the \$5.3 billion that were deferred, whether any of those could have fallen within the category of the President's potential authority as Commander in Chief?

Mr. WELD. No. The bulk of that impoundment involved highway and urban programs.

Ms. HOLTZMAN. OK. Thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Did I understand that a distinction is made between a deferral and a simple refusal to spend money on a program?

Mr. WELD. The administration has taken the position in hearings before the Senate Subcommittee on the Separation of Powers that the power of the President is equally great in either case.

Critics of the present administration's impoundment policies have pointed out that many impoundments in the past involved merely a deferral of expenditure for the purpose of making a further study rather than a determination not—not all of the present administration impoundments have involved terminations. Some of them have been merely deferrals. A distinction is drawn in the proposed legislation between those two forms of impoundment.

Mr. CONYERS. Could we, Mr. Chairman, indicate which are deferrals and which are refusals to expend? Is there any way we can identify those two classes?

Mr. WELD. Well, I can tell you, Mr. Congressman, that the terminations of the programs were principally those in the Department of Agriculture and that is indicated in the memorandum.

The housing area as you know involved an 18-month moratorium. It is not collected in the memorandum but it is mentioned at several points case by case.

Mr. CONYERS. It is quite difficult to sometimes distinguish between these two classes, is it not?

Mr. WELD. Occasionally it is, Mr. Congressman.

Mr. CONYERS. In terms of actuality; that is, you might say that you are deferring and the net result might cause the destruction of the program.

Mr. SEIBERLING. Mr. Chairman, is a distinction also made in this memorandum as to cases where the statute expressly, or the appropriations bill expressly directed spending within a certain period and those were simply authorized and appropriated the money. Are there such cases? Are there two types?

Mr. WELD. Well, there is a great variety of language in the Appropriations Act. In at least one case the bill included a sense of Congress provision, that it was the sense of Congress that the funds not be impounded. Those funds were withheld and the administration took the position that the sense of Congress provision was merely precatory rather than mandatory.

Mr. SEIBERLING. But are there some that are brought out in here where they are mandatory, where the spending is mandatory?

Mr. WELD. It has been the holding of many of the court cases that spending was intended by Congress to be mandatory under the statute. As to whether there anywhere the statute was unambiguously mandatory I suppose that is a matter of characterization.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Suppose the spending of all of the money appropriated by Congress exceeds the legal debt limit, which is also imposed by Congress. What is the legal situation in that regard?

Mr. WELD. What has happened in the past, Mr. Congressman, has been that the President has requested, or it has been requested and Congress has granted an extension of the ceiling on the national debt.

Mr. HOGAN. But let us assume he didn't do that, and Congress has appropriated more money than the debt ceiling allows. What is the legal situation in that regard?

Mr. WELD. Once the ceiling is passed?

Mr. HOGAN. Yes; the ceiling has been imposed, and the collective amount of the money appropriated by Congress is in excess of that ceiling, what is the legal situation?

Mr. WELD. I cannot answer that because to my knowledge in the past the ceiling has always been raised when the level of spending threatened to exceed the national debt limit.

Mr. HOGAN. But that is not an answer. I mean, I think that is very important.

Mr. SEIBERLING. How can he answer?

Mr. HOGAN. To a determination.

Mr. WELD. I don't know what would happen.

Mr. SEIBERLING. It's a hypothetical question.

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Weld, I note the distinction which is made here as far as mandatory language to which you refer to on page 36 and you give the example of the Rural Electrification Administration. I seem to recall a distinction which occurred on spending for particular aircraft or aircraft carriers, or something like that, where we built the language into the bill compelling the expenditure of the money when appropriated for these particular purposes and that just was

my offhand view as distinguished between a situation where the executive would have latitude, discretion and where it would not. I do not see the example though of the military hardware that was referred to in this appropriation legislation.

Mr. WELD. Is this in the present administration or the administration of President Kennedy?

Mr. McCLODY. I think it was in a prior administration. Johnson I thought or Kennedy.

Mr. WELD. There have been several efforts by the Congress to include mandatory language in military appropriations. In the instance which I think the Congressman was referring to, it was in 1961, and the President was able to persuade the House Armed Services Committee to withdraw its recommendation that the word "directed" be included in the legislation and the word "authorized" was substituted.

Mr. McCLODY. So you are not aware of any appropriation with regard to military hardware where they were—

Mr. WELD. Oh, there have been such appropriations. I am not aware of any instance where there was a direction to spend included in the appropriations statute where the Executive has resisted the expenditure of those funds.

Mr. McCLODY. Would that not constitute a distinction between Executive latitude or discretion?

Mr. WELD. It is a very important distinction and it has been one of the major arguments advanced on behalf of the administration, that since this has happened in the past, if Congress wished to make its intent unambiguous it could include clearly mandatory language in the statute. In the case referred to in the memorandum where such language was added to two programs in the Agriculture Department, in one case the President vetoed the bill and the veto was sustained.

Mr. McCLODY. Well, have you made any comparison or analogy between the Federal, the Federal policy and the State policy, where I believe in a State legislature, where there is no authority to exceed the budget authorization, and I think the Governor would actually be guilty of some kind of crime if he did not withhold expenditure or impound funds in excess of the funds available.

Mr. WELD. I am not aware that we have researched impoundment practices of State administrations.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. You indicate, sir, that some of this has been going on in previous administrations and I have two responses to that, that one evil does not justify another evil, and it seems to me that impoundment can be dissected and known for what it is.

Furthermore, as indicated on page 82, is it fair to conclude from what you say here that this administration is the first one that has sought to impose its own political priorities by a system of impoundment?

Mr. WELD. You are asking whether I think that is fair?

Mr. DRINAN. Yes; that is what Mr. Fisher says, and as I understand it and you quote him in the footnote, he is probably the number one expert on this. He is a historian or a lawyer at the Library of Congress. Does he so conclude?

Mr. WELD. That is a position taken by Mr. Fisher in the Buffalo Law Review and in earlier law review articles written by him they were more sympathetic to the——

Mr. DRINAN. Is there any evidence against his position?

Mr. WELD. Well, I think it is a question of characterization, Mr. Congressman. I would hesitate to venture a summing up on all of this.

Mr. DRINAN. Has anyone said the opposite? You say it has been asserted that the Nixon administration, unlike its predecessor, has sought to impose its own political priorities upon the Congress by its impoundment policy. And you cite Mr. Fisher.

I am just asking does someone dispute that? Does someone say that the Nixon administration has not done that?

Mr. WELD. The position of the administration is these actions have been taken in the interest of curbing the inflation rate.

Mr. DRINAN. I am not asking the courts or for scholars. Is there any evidence outside of the administration which would justify a conclusion contrary to Mr. Fisher?

Mr. WELD. Well, the administration has been upheld in some of the court decisions, Mr. Congressman. I suppose that is authority.

Mr. DENNIS. Mr. Chairman?

Mr. SARBANES. Mr. Chairman, could Mr. Weld complete his presentation? Has the presentation been completed?

The CHAIRMAN. Yes; the presentation has been completed.

Mr. WELD. The factual presentation.

Mr. SARBANES. Is there to be a presentation of the legal side of this as well, I mean are we going into an open question period now.

The CHAIRMAN. Yes; we are.

Mr. SARBANES. Or is there further presentation?

If there is a presentation, I would like to get through that.

The CHAIRMAN. The presentation has been completed.

Mr. WELD. The legal discussion is in the second part of the memorandum.

Mr. OWENS. Let's hear that.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Might I inquire how long would that take?

Mr. WELD. I could do it in just a couple of minutes, Mr. Chairman, just to state the arguments.

The CHAIRMAN. Well, why don't you proceed and state the arguments?

Mr. WELD. The most serious arguments against the administration's impoundment policies probably are that it represents an encroachment of Congress' legislative power and exceeds the limited role which the Constitution assigns to the executive in the lawmaking process. The executive is empowered to recommend measures which the President thinks wise and it is empowered to veto measures which the President thinks unwise. But, that is all the Constitution says. And so the argument is advanced against the administration that when the executive branch terminates a program for which the Congress has appropriated funds, that is not a result which would have been intended by Congress.

The other major argument—or by the Framers.

The other major argument or another statement perhaps of the same argument is that the President is—there is an obligation im-

posed upon him in the Constitution to take care that the laws be faithfully executed.

And the argument which has been accepted by several courts is that the failure to expend funds appropriated by Congress in such a manner as to effectuate the congressional intent constitutes a failure to take care that the laws be executed.

The arguments which have been presented on behalf of the administration are three.

The first is that under the terms of the statute, in questions under which the funds have been appropriated, the language of the statute demonstrates congressional intent that the Executive has discretion. In other words, as a matter of statutory construction the administration argues that in exercising spending discretion it is giving effect to the congressional intent.

The second argument advanced on behalf of the administration is that a number of general statutes impose obligations on the President which may, in a given case, prove inconsistent with full expenditure of sums under an appropriations statute. One such example is that mentioned by Representative Hogan, which is the ceiling on the public debt. From time to time, there have been in effect expenditure ceilings enacted by Congress providing that expenditures in a given year shall not exceed a given amount. The last such ceiling expired on July 1, 1971.

Another statute which has been invoked by the administration is the Antideficiency Act of 1950, which imposes upon the executive branch a duty to establish budgetary reserves so as to avoid wastefulness, and whenever developments subsequent to the appropriation statute render it advisable to do so. That language is proposed to be eliminated from the Antideficiency Act in this budget and the impoundment control legislation referred to earlier.

Mr. DANIELSON. May I ask a question there, Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. In the Antideficiency Act, is it not the policy of that act to have allocations by periods of time within the fiscal year to prevent coming up with a deficiency before the fiscal year is over, thereby acquiring a supplemental appropriation?

Mr. WELD. That is correct.

Mr. DANIELSON. So I do not think it is seriously contended that this is sound authority for a permanent type of impoundment, but only for an allocation of expenditures throughout the life of a program so as to insure that there will be funds for the ongoing program. Is that not right?

Mr. WELD. The argument does make more sense in that context.

Mr. DANIELSON. Regardless of whether it makes sense, is that not the position that the courts have held with respect to that law?

Mr. WELD. The majority of courts, yes, Mr. Congressman.

Mr. DANIELSON. Are there exceptions?

Mr. WELD. There are.

Mr. DANIELSON. Would you state some, please?

Mr. WELD. There was a case in the District Court of California, which I believe was referred to earlier, where the court stated its belief that the Antideficiency Act represented a codification of the public

policy, that the Executive had the power under the Constitution to impound funds so as to curb inflation, prevent wasteful spending. The court took the position that the Executive could not be compelled to expend funds.

Mr. DANIELSON. Was that a district court opinion?

Mr. WELD. District court.

Mr. DANIELSON. How long ago, about?

Mr. WELD. It was September 7, 1973.

Mr. DANIELSON. Is that consistent with the established precedents of the 24 years that that law has been on the books?

Mr. WELD. Well, that decision construes the 1972 amendments to the Water Pollution Control Act and there are at least six decisions contrary that I am aware of around the country. But that matter is now pending before the Supreme Court, which has granted certiorari to resolve that question.

Mr. DANIELSON. The question has gone before the Supreme Court, then, on what kind of box score of what one Southern District of California believed and five, is it, different opinions?

Mr. WELD. More than that. There are two cases before the Supreme Court. I would say the score is more like seven or eight to one the issue of executive discretion under that statute.

Mr. DANIELSON. Thank you.

Mr. WELD. Finally, the third argument which appears sometimes to have been presented on behalf of the administration is the argument that the grant of executive power to the President empowers him to impound funds in the national interest and that it would be unconstitutional for Congress to attempt to compel the Executive to expend any sum of money. I say appear to have been advanced because it is not clear to me that the President has ever adopted this argument in terms. Certain statements and memoranda prepared by the Department of Justice in 1973 appear to assert the argument.

Ms. HOLTZMAN. Mr. Chairman?

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Is there a table that in effect lists the impoundments and then lists the basis—I mean that you have prepared for your own work in greater detail than this memo—then lists the basis which the administration asserted, upon which the impoundment rested?

In other words, they could assert that it was contained within the authority of the particular statute. I take it they could assert that it was based upon some other statute which was being applied.

And third, there is this area in which there have been some rather sweeping assertions made particularly by Dean Sneed in his testimony as to the reach of power. I do not know whether that has been relied upon in any of the court cases as the basis upon which that impoundment was put forth.

Mr. WELD. Mr. Congressman, in order to determine which arguments have been advanced in each case, it will be necessary, I suppose, to read the briefs in each case. I have prepared a memorandum in far greater detail than this one, analyzing the court decisions in terms of what the court said the administration had argued. In the briefs that I have read, I am aware of one case in which the administration

appeared to concede the point that if the intent of Congress were made unambiguous, that would be the end of the case. In another case, the administration appeared to assert the proposition that Congress could not compel the Executive to expend funds. Both those instances are referred to in this memorandum.

Mr. SARBANES. Now, in the instance in which they assert the second category, I take it that is in effect a reliance on the President's power and obligation to take care that the laws be faithfully executed. Is that correct? What is the nature of the contention that is made there in defense of the impoundment when they rely on that second category?

Mr. WELD. The nature of the contention is that the President has a duty to take care that all the laws be executed and that the execution literally of all statutes would be impossible because of conflicting statutory purposes, the argument is then made that in the absence of a congressional machinery for reconciling these different purposes, and determining which are to be given prominence—in the absence of such a machinery, it is argued that the discretion to reconcile those statutory purposes so far as possible must be inferred to reside in the Executive.

Mr. SARBANES. Has an abstract been made to any extent of the arguments advanced in those briefs that put forth the administration's position with respect to take care that the laws be faithfully executed clause? And if not, how difficult would it be to assemble that?

In other words, as I understand it, the administration argues that this act of theirs of impounding funds—in other words, not carrying forward on a law passed by the Congress—is related to the President's power under the "take care" clause, and I would be interested to have some abstract of the sweep of the assertion of the power and the responsibility that comes with the exercise of that "take care" clause.

Mr. WELD. I think perhaps the best way to get the flavor of the sweep of the administration's assertions is to focus on the statutes whose allegedly conflicting purposes they point to. The arguments and the results in the court cases are canvassed at pages 66 and following of this memorandum.

Mr. SARBANES. Thank you.

Could I ask one final question?

It seems to me obviously, we have a very serious situation if the Congress enacts a law and the President just ignores it. I mean it is a standing on its head of the constitutional arrangement for the making and the carrying out of laws. I would think if you had to go to the court on every law that you passed in order to determine that, we would be in a very sorry fix with respect to how the constitutional system is supposed to function. I would like to see a chart that showed the impoundment and then put beside it the basis of the administration's assertion of authority to carry out the impoundment.

Mr. DRINAN. Would the gentleman yield?

Mr. SARBANES. Let me just finish the question.

Then secondly, the instances, what they have then done with respect to judicial decisions in those instances.

In other words, what is the basis of their assertion that they have the right to impound, and then how have they reacted to a court judgment with respect to those impoundments?

Mr. WELD. This memorandum is intended to be fairly conclusive in collecting the court cases passing upon various contentions advanced by the administration. I think we have read every case in the area. As I say, we have not read the briefs in every case, but the numbers are running up toward 100.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DRINAN. Would the gentleman yield?

Mr. DENNIS. In just a second, I will be happy to. Mr. Weld, there is no question that Congress, whenever it wants to, can adopt strictly mandatory and directory language in an appropriation bill, is that not true?

Mr. WELD. I think that is true, Mr. Congressman.

Mr. DENNIS. As a matter of fact, we have not done it too often, I believe. That is also true, is it not?

Mr. WELD. Efforts to do so have generally been unsuccessful in this administration.

Mr. DENNIS. And if such language were adopted by the Congress in appropriations bills that it might enact, then the executive argument would be reduced completely to whatever merit the argument based on other statutory duties or the constitutional argument of the duty to take care to execute the laws might have, that would be about all you would have left for the executive if you wrote in directory language, is that not true?

Mr. WELD. I do not think you would even have the argument based on the take care clause, because that argument really has its foundation in other statutes. I would think that if Congress made its intent unambiguous that insofar as those other statutory purposes might be conflicting, they were to be overridden, that would make the argument based on other statutes—it would leave only the bare assertion of executive power.

Mr. DENNIS. Under the Constitution, whatever that might be.

Mr. WELD. Under the clause vesting the executive power of the United States in the President.

Mr. DENNIS. Therefore, if the Congress was really serious about this question, that would be the obvious way to approach it, would it not?

Mr. WELD. It is certainly an approach.

Mr. DENNIS. Thank you, Mr. Chairman.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Weld, you stated that to your mind, the basic thrust of the administration's defense of the impoundment policies was its inability to reconcile the appropriations by Congress with the debt limit. That is why I would certainly support Mr. Sarbanes' request, because I note on page 75 of the memorandum that the President makes a claim of the constitutional right to impound in which he refers not at all to the question of the difficulty of reconciling different congressional enactments. So I think that that would be extremely helpful.

Second, with respect to any recommendations that this administration has made on the debt limit, has it advised Congress as to what the debt limit ought to be to carry out all of the appropriations that have been made or not?

Mr. WELD. I would suppose that that is only a matter of arithmetic. I am not aware of a formal communication. The administration has advised that unless expenditures are kept down to x level—for example, \$250 billion—that the debt limit might be exceeded, or that there might be danger of that.

Ms. HOLTZMAN. Has it made any effort to advise? I would appreciate your informing us of efforts made by the administration to advise the Congress that it could not carry out the appropriations because of conflicts with the debt limit. I think the argument of the good-faith effort to reconcile conflicts, assuming that that argument is legally sustainable, would be borne out by the failure or the actions on the part of the administration.

Third, I would like to follow up the point Father Drinan raised earlier with respect to compliance with court decrees. You said that in two cases where contempt had been raised, the court refused to hold the administration in contempt. Was that because they had in fact complied with the court decrees, or for other reasons?

Mr. WELD. I do not know the reasons.

Ms. HOLTZMAN. I think it would be very useful for us to get exact figures from you with respect to the extent of compliance, if any, with final court decrees regarding impoundment. I do not think it is possible for us to make a judgment with respect to compliance unless we have those exact figures.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. In the question brought forth by Mr. Sarbanes, would it be fair to state that in the document we have here, a study and a collection of all the decisions of all the Federal courts, that only one or two have accepted any justification that the administration has advanced for the impoundment of funds?

In other words, there are some 22 or 24 decisions contrary to the position of the administration. Is that right? Or more?

Mr. WELD. There are at least 20, Father Drinan.

Mr. DRINAN. Would you have any judgment as to how many impoundments and how much money would add up to something that would approach an impeachable offense?

Let me change that. In several programs where funds have been impounded, I do not think it is quite proper to say that there is no "must" in the statute. For example, sections 235 and 236 of the Housing Act say that when a certain person is in this category, \$8,000 or under, that person is entitled to. That is with the understanding that \$1 billion or \$2 billion will be spent in a particular year. Do you think that the argument that the Congress has not made it clear that the money must be spent, does that actually have validity in these programs?

Mr. WELD. With respect to the 235 and 236?

Mr. DRINAN. Or similar programs? In other words, has not the Congress made it overwhelmingly clear that it is intended that this money be spent for the purposes designated for the individuals who are eligible?

Mr. WELD. That has been the holding of the majority of the court cases.

Mr. DRINAN. How many cases go contrary to that specific point?

Mr. WELD. Pardon me?

Mr. DRINAN. How many cases are contrary on that point? You say the majority, but you have told us only of one in California.

Mr. WELD. That is under a given statute. There are not 20 cases under any given statute.

Mr. DRINAN. But that argument has not been accepted, the argument that they have advanced, that Congress has not made it clear that this money should, in fact, be expended?

Mr. WELD. It was accepted in another district court case as to a housing program in 1972, and it was accepted in the water pollution case I referred to earlier.

Mr. DRINAN. That is the California case.

Mr. WELD. And in many statutes, in many cases, the courts have found that the Congress did intend to vest some discretion in the administrator of the statute, but that that discretion had been exceeded.

Mr. McCLORY. Would you yield for a question?

Mr. DRINAN. Yes.

Mr. McCLORY. Mr. Weld, are the principal legal points that are referred to in this brief and that are involved in this issue involved in the two cases pending before the Supreme Court on which you say certiorari has been granted?

Mr. WELD. No, Mr. Congressman, the two questions presented in those two cases are whether under the 1972 amendments to the Water Pollution Act, the Administrator did have discretion—that is the first question—at the allotment stage. And the second is whether the suit is barred by the doctrine of sovereign immunity. If the Supreme Court did pass upon the question, it would not be necessary to do so in order to decide the case.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Do I understand that in the event there is an excessive impoundment, there would be three remedies available—impeachment, access to judicial remedies, or access to legislative remedies? Or do I understand your memo to be suggesting that when you have access to judicial and legislative remedies, you do not seek impeachment as a remedy to excessive impoundment?

Mr. DENNIS. Mr. Chairman, that begs the question we are here to decide, does it not? It is not fair to ask counsel that kind of question.

Mr. WALDIE. It seems to me counsel has set forth or attempted to set forth—

The CHAIRMAN. I think counsel is in a position to at least offer his opinion as to the various areas that the Congress could consider for the resolution of a problem such as impoundment presents.

Mr. WALDIE. The reason I asked the question is because I was curious as to the extent of discussion of legislative remedies to excessive impoundment. I presumed you included it to make a point and I am quizzing you as to what point you were seeking to make.

Mr. WELD. I would not suggest, Mr. Congressman, that in every case where a judicial or legislative remedy exists, impeachment does not lie. I would regard legislation such as the Budget and Impoundment Control Act, which will be coming up for approval shortly, as something more than a straw in the wind.

Mr. WALDIE. I do not understand that. You mean as a remedy for the abuse short of impeachment?

Mr. WELD. As a remedy for the abuse. I would think that the question whether one remedy should substitute for the other is a question for the members of the committee.

Mr. WALDIE. I understand, but the reason for your including these various remedies is for that determination on the part of the committee.

Mr. WELD. And in addition, it seems to me that they constitute a part of the fact history of what has happened with respect to impoundment during this administration.

Mr. WALDIE. I am not arguing with you. I do not happen to believe that the condition of impoundment in the present instance constitutes an impeachable offense, in my own view. But I was curious as to whether you were developing the theory that in the face of alternative remedies, impeachment ought not to be considered.

The CHAIRMAN. Well, I do not believe that that is a question that counsel is required to answer, either. That is a question, again, for the committee to determine.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. It does seem to me that while this is an excellent memorandum, it does have a very glaring omission in that, as has been pointed out already, the portion that deals with the compliance by the administration with court orders terminating impoundment actions is based on assumptions rather than on an actual determination as to the facts. I would like to inquire whether the staff is prepared to make an actual investigation in each case to determine the extent of compliance, and if not, I am prepared to ask the GAO to make such an investigation.

Mr. WELD. Mr. Congressman, in many cases, I am aware from the court dockets that the cases have been dismissed because the funds were released. I did not——

Mr. SEIBERLING. Well, we should have a rundown on that, it seems to me, so that we know positively what the action has been in each case. Is that something you can put together?

Mr. WELD. Yes; I think that could be done, Mr. Congressman. I am not sure there is any way of determining absolutely what has happened in every case.

Mr. SEIBERLING. Well, I do not know why there would not be. The facts presumably are in existence; it is simply a matter of whether they can be dug out.

I would like to ask, Mr. Chairman, if we can have the staff do that for us?

The CHAIRMAN. Has staff not already considered all of the cases that relate to impoundment?

Mr. WELD. Staff has considered all the cases. Perhaps the Congressman would be interested in knowing that biweekly reports are transmitted by the National Committee on the Office of the Attorney General, operating out of North Carolina, and those reports update information on every single impoundment case then pending. Those reports also, the people who prepare those reports are in touch with counsel in every case. So that if there were an instance where counsel

for the plaintiffs in an impoundment action believed that the administration action was contemptuous of an order of the court, that would show up in those biweekly reports.

Mr. SEIBERLING. When you say cases pending, you mean to include cases which have had a final order issued also?

Mr. WELD. Yes, Mr. Congressman, any development in those cases would show up in those reports as well and we do receive those.

Mr. SEIBERLING. Well, I think, since it is possible to make positive verification, we ought to have a statement based on verified facts as to the compliance in each case and not just base it on the assumption that since nobody has complained, therefore, there is compliance.

If it is feasible, I would like to request that that be done.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Well, is that information, those data, available from those reports that you have just made reference to?

Mr. WELD. To the extent that I indicated that those reports would cover any official developments in the case and those reports are prepared by persons who have been in touch with counsel. If it is thought inadequate to rely upon the views of counsel in a given case as to whether or not the order in his favor is being complied with, I am not sure how you get that information aside from calling the executive departments.

Mr. SEIBERLING. That is exactly what I am getting at. The GAO can pick up the telephone or send an agent over to each department.

The CHAIRMAN. I think a request should be made with the Agency, the GAO, and I think that could be furnished as an addendum.

Mr. McCLORY. May I ask one question, Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Weld, I have referred to the part on page 40 where you referred to impoundment of funds as a basis for impeachment and there are several English precedents there. There are no American precedents with regard to the *Andrew Johnson* case or any other impeachment case, is there?

Mr. WELD. No.

Mr. DRINAN. Going back to the total amount now impounded, it does not seem that all of the releases that have allegedly taken place make any difference because 1 year ago there were \$7.7 billion impounded and now that has increased as of April 20, 1974. It is \$10.3 billion. Consequently, there are more impoundments, and the court cases, apparently, are small cases, if in fact they do release them. I think, independently of the court cases and the alleged release, the essence of the impoundment as to the damage it does and why it is illegal—and that is what all the court cases have said—it is unlawful conduct on the part of the administration, it is illegal action—that they are depriving the people of \$10 billion of authorized and appropriated money that the Congress wants them to get. So independently of the fact that the administration allegedly complies with the court decrees, they are still involved in depriving the people of \$10 billion of congressional funds.

Mr. WELD. Well, Father Drinan, the majority of that \$10 billion constitutes routine impoundments required by the Anti-Deficiency Act.

Mr. DRINAN. But that does not include all of the other housing and

other funds where they have suspended the programs or denied licenses or have said that we are reworking this where, in effect, the program has been dismantled.

Mr. WELD. It does not include those types of programs.

Mr. DRINAN. In other words, up to \$18 billion. That is your figure. So there are \$18 billion of impounded funds right now. That is straight from your document.

Mr. WELD. I think that estimate was for an earlier report. It is the estimate of Mr. Fisher.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate?

Mr. HUNGATE. Counsel, I am relating somewhat back to Mr. Waldie's earlier question. I understand that in these impoundment situations, there may be three remedies available—legislative, judicial, and impeachment. Is that fair?

Mr. WELD. Yes, Mr. Congressman.

Mr. HUNGATE. Are those three remedies available, in your opinion, in all impoundment situations or are there some that are only susceptible to part of those three remedies?

Mr. WELD. Well, I suppose it depends on what view is taken of the argument based upon executive power. If that argument were accepted, it would seem impossible for the Congress to remove an asserted constitutional power by statute.

Mr. HUNGATE. Legislative power you are talking about there?

Mr. WELD. That is correct.

Mr. HUNGATE. All right. Now, I want to ask once more, do you have an opinion on whether this legislative power presently exists or are you relying on this proposed budget and impoundment statute that may be passed?

Mr. WELD. Well, Congress has enacted a number of measures in the past, as set forth in the congressional actions section of this memorandum. It seems to me that this proposed legislation is the most comprehensive, perhaps bids fairest to deal with the problem comprehensively in that it is not limited to a particular statute and in that respect has the virtue of embracing the entire range of impoundments.

Mr. HUNGATE. The only difficulty with that statute is that some of our greatest bills never get enacted around here. But let us say we have one impoundment—that is all we have—and we have a court order and the order is complied with. It would seem to me that would be a clear case where impeachment might not be an appropriate remedy, even though it might be a possible remedy.

But let us suppose on the other hand that everything that goes down there is impounded, Counsel. It would seem to me that might be a clear case of the abuse of discretion, even if it existed. Would you think it fair to think that somewhere in between there it lies to the responsibility of the Congress to determine whether that discretion has been abused? Would that be a possible theory?

Mr. WELD. Yes, Mr. Congressman.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman.

Counsel, would you be able, with the work you have done, to separate

the impoundments on page 5 as to those which are under the Anti-Deficiency Act and which would be actually in a different category?

Mr. WELD. Mr. Chairman, I can tell you which impoundments have been assertedly justified on the grounds of Anti-Deficiency Act, because the OMB report includes a statement of the reasons for each impoundment.

Mr. DANIELSON. They do that in the Federal Register periodically, do they not?

Mr. WELD. That is correct.

Mr. DANIELSON. Mr. Chairman, could we have that breakdown? I think these figures would have greater meaning to it if we could distinguish between those which are assertedly under the Anti-Deficiency Act and those under which no such assertion is made?

The CHAIRMAN. Can you break those down?

Mr. WELD. Yes.

Mr. SARBANES. And could you go further and under each impoundment put under what color of law that impoundment is being asserted?

Mr. DANIELSON. That is in the Federal Register, I think.

Mr. WELD. As to the impoundments listed in the quarterly reports filed by the Office of Management and Budget, the statement of reasons would include that information.

The CHAIRMAN. The Chair is going to recess until 10 o'clock on Tuesday. Any members who would like to inquire of counsel between now and Tuesday on this brief, I am sure counsel will be available.

[Whereupon, at 4:45 p.m., the committee recessed to reconvene at 10 a.m., Tuesday, June 18, 1974.]

IMPEACHMENT INQUIRY

Executive Session

TUESDAY, JUNE 18, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thorton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; James B. F. Oliphant, counsel; George Rayborn, counsel; Hillary D. Rodham, counsel; Gary W. Sutton, counsel; William A. White, counsel; Robert McGraw, investigator; and Jonathan Flint, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

Before proceeding, I would like to call the committee's attention to a communication I have received from Chairman Fulbright requesting to make available to him the materials in the committee's possession concerning Dr. Kissinger's role in the wiretapping operation. We have some materials which we have received, I think, from the Department of Justice, which came to us under the embargo of confidentiality. In light of the fact that the Foreign Affairs Committee is going to hold hearings, the chairman has requested that we make these materials available to them in accordance with whatever restrictions your committee wishes to impose.

We have had material from them which came under the same kind of a sanction and frankly, I do not see any reason that we should not make these available and I do not think that it takes a business meeting to vote on this. I would just ask unanimous consent that we make this available.

Mr. McCLORY. Mr. Chairman?

(1323)

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. I see no objection to this and I hope there will be no objection and that we deliver whatever they require in order to facilitate whatever investigation they deem necessary.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, I just want to understand fully what you said.

Did I correctly understand that you wished to deliver to the Senate Foreign Relations Committee material which was delivered to us by the Department of Justice under some circumstances of confidentiality? Is that correct?

The CHAIRMAN. I believe that is the material, yes.

Mr. WIGGINS. Well, I would like to reflect a moment on that. Immediately what comes to my mind is Judge Sirica's view of a similar request. He, as I remember, said in an opinion just recently that when he received material under a special embargo, he felt that he could not release it to third parties, but that the request ought to be made to the person who gave the information to him. I just throw out as an alternative that maybe Senator Fulbright ought to make his request to the Department of Justice or whoever gave us the information rather than from this committee.

I am not sure of my views on this. I just want to kick it around with the members of the committee before we receive data and then release it to third parties, which may prejudice our right to receive data in the future.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. My thought was somewhat similar. I have no objection to the Senate having it, but if in fact we got it from Justice under an agreement, it seems to me that at least, probably the chairman should talk to Justice and try to get their agreement, too, before we do.

The CHAIRMAN. I have instructed Mr. Doar to talk with Justice.

I believe, Mr. Doar, you are doing this, is that right?

Mr. DOAR. I have not reached them yet but I intend to this noon.

The CHAIRMAN. You have to understand that the Committee on Foreign Relations has supplied us with information in this regard and it makes the same request of us as we made of other committees.

Mr. WIGGINS. To return to the Foreign Relations Committee any information they gave to us, I think that is an idle act. They probably have it. But may we defer a final decision until counsel has had an opportunity to check with Justice with respect to matters that came from Justice?

Mr. HUNGATE. Will the gentleman yield?

I share the gentleman from California's and Indiana's feeling to some extent. Subject to indeed some reflection, these are things I would like to reflect upon, sleep on, maybe. But initially, I tend to agree with him that the person who gave it to us under embargo, whether we should seek it or perhaps more appropriately, the Senator should seek it, we ought to give that further consideration, I think.

The CHAIRMAN. All right; I will withdraw the unanimous-consent request and ask Mr. Doar to contact Justice and report to us and then take action. Mr. Doar.

Mr. LATTA. Mr. Chairman, may I ask a question before we get into the morning business?

The CHAIRMAN. Mr. LATTA.

Mr. LATTA. Am I correct in assuming that we are still operating on a nonpartisan basis in this committee?

The CHAIRMAN. I hope that we can assume that.

Mr. LATTA. Well, on the basis of this assumption, then, I would like to have copies of the 14 memos that were prepared by majority staff.

The CHAIRMAN. That material was not prepared by the impeachment inquiry staff, it was prepared by the regular staff.

Mr. LATTA. Does it make a difference?

The CHAIRMAN. That material is available to the members who request it; only that material which has already, however, been circulated, because I have, as you know, instructed that there be no further distribution of any memos beyond those which had already been prepared and been distributed.

Mr. LATTA. I want to commend the chairman in his action, but I would still like to have copies of those memos so that I could go over them. I understand they have been, some of them have been handed out already.

Mr. McCLORY. Would the gentleman yield to me?

Mr. LATTA. I would be happy to yield.

Mr. McCLORY. I delivered a letter to the chairman this morning protesting this apparent leak of information which the Washington Post is reporting. I understand that they got, whatever they got they got all at once, but they are putting it out on a daily basis as though there is a continual leak of information emanating from this committee. I think it does a great disservice to the committee.

I would suggest that these memos, regardless of for whom they were prepared, be distributed generally to all of the members so that they are really not confidential and they are not leaking of information, but they are something that a member requested, which have been prepared, and put this thing behind us and let every member have these for whatever use they might be.

Mr. DENNIS. Would the gentleman yield to me?

Mr. LATTA. I will be happy to yield.

Mr. DENNIS. I would like, respectfully, to join Mr. Latta's request. The basis I put it on is that these particular 14 memos have now been given to the press and surely, they should likewise be given to every member of this committee under those circumstances.

The CHAIRMAN. I cannot see how the Chair can do otherwise than to say that those memos are available, they have been distributed already. It is unfortunate that they have gotten into the press.

Mr. DENNIS. Well, Mr. Chairman, just before I quit, I appreciate that and we will look forward to getting a copy, then. They have not been distributed to me, I know that.

While we are on the general subject, I hope the chairman will give some further consideration to the matter of letting the members look at the transcript—the original committee transcripts—because these memos, as I understand it, are based on a comparison of those transcripts and the White House transcripts, and we could do that ourselves if we had them available. Really, I think we have about reached

the point where the committee members should have those available. I hope that will be given some consideration.

The CHAIRMAN. The gentleman know that those transcripts are available to be seen by any of the members at any time.

Mr. DENNIS. Well, yes, but it would be so much better to be able to take them back to our office at your leisure and be able to do the regular kind of a job. It is not very satisfactory to run over to the Congressional Hotel. Staff members do not have to do that. I do not believe committee members should have to do it, either, any longer.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. While we are throwing out these ideas for thought, I guess, I would like to take Mr. Dennis' thought a step further and just suggest that I think it is time for the committee to consider making those transcripts public. I think they were in fact made public by the White House. It has always seemed to me from the beginning that we should have put out the more complete version which is in our possession so that we do not have this question. I never thought there was a question of confidentiality with respect to those conversations which had already been released. I really thought it was more a question of accuracy and completeness.

Therefore, I would agree with the gentleman, but go an additional step in my feeling that the whole thing ought to be made public.

Mr. RAILSBACK. Would you yield?

Mr. SARBANES. Yes, I yield.

Mr. RAILSBACK. Mr. Chairman. I thank the gentleman for yielding. Let me just second his motion.

Mr. SARBANES. It is not exactly a motion. It is an idea for a thought, nevertheless.

Mr. RAILSBACK. I know it was not a formal motion. But the best reason for doing that is that one memo prepared by Mr. Dixon is completely, completely distorted and misrepresentative on the March 22 conversation. I went over and listened last night to the full conversation, where the President says to Mitchell, take the fifth, and so forth. Then it goes on and presents what the President's preference is, that you do not do that. You know, that kind of selective leaking just does a great disservice, not only to us but to the public, to the press.

I think at this point, it is time in fairness to the President and fairness to the public to get those transcripts out and then let those people eat their words that made the mistake of publishing what I thought was a very poor memo.

The CHAIRMAN. I would like to state that all of this would be a subject for discussion and consideration by the committee as to what material will be released by the committee at a meeting that the Chair intends to call early next week.

Mr. LATTI. Mr. Chairman?

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman. I certainly agree that your decision regarding the memos be distributed to all members is entirely appropriate. I would make the request at this time that any memos that have been prepared for the minority members by their staff be dis-

tributed to us. And I understand that there are quite a number. I think that is the only evenhanded way of handling this particular situation.

Mr. LATTA. I would be happy to. I do not know of any.

The CHAIRMAN. I think that is a fair request.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman, I have heard a lot of things at these little briefing sessions and I did not know that any memos had been prepared for the minority. If they have been, I missed them and I would be happy to share whatever I have gotten, which is nothing.

Before I sign off, Mr. Chairman, I would like to address a question to Mr. Jenner and Mr. Doar and ask whether or not these two gentlemen knew that this man Dixon was preparing these memos over there in the Congressional Hotel.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you. I did not know that Mr. Dixon was preparing any memo over in the Congressional Hotel and do not know it as of the moment. Mr. Dixon did come over to the staff quarters and did listen to tapes.

Mr. EDWARDS. Will the gentleman yield?

Mr. Chairman, I did not get an answer to my request.

Are there a number of memos that have been prepared for the minority that we have not been privy to? Mr. Dennis? Or for any individual members.

The CHAIRMAN. I am not aware, I have not been advised that there have been any memos that have been prepared. I have heard——

Mr. RAILSBACK. Mr. Chairman?

There was one memo prepared on going to court on the enforcement of subpoenas which should have been distributed to everybody. It was prepared at my request and I just told Tom Mooney that we ought to distribute it to everybody.

Mr. DANIELSON. Mr. Chairman, I would like to make a suggestion for the consideration of the Chair and the ranking minority member as well as counsel. Apropos of the so-called Dixon memorandums, it appears that the Washington Post has a complete set and is publishing them seriatim. I would think that in fairness to the rest of the press, they might as well have the same set. I do not know why we should give one newspaper a scoop over the other members of the media.

I have received a number of requests from the Los Angeles Times, for example. I have not acceded to those requests, but it seems to put me in a kind of poor position to deny them access to the memos while the Post has access. I wish the Chair would at least consider that. This is not a motion, it is a proposal for the consideration of the Chair and the ranking minority member.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I would like to state that I had authorized that members of the staff, the Judiciary Committee staff, be of whatever assistance they could be to all members at all times regarding any questions. However, and I state this again—I suppose I am repeating myself—I was not aware that the members of the staff of the Judiciary

Committee were preparing these particular memos, extracting materials, and for that reason, I feel that the memos ought to be distributed to all of the members. They are now released and I see no reason not to release them to all the newspapers. I will so instruct them although I guess it is going to be pretty late news.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. If we release them, can we do it with the caveat that they may not be very reliable and accurate? Because that is exactly what I discovered in respect to one of them.

Mr. HUNGATE. The President did not do that.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Might I hear first from Mr. Doar?

Mr. DOAR. Mr. Chairman, with respect to releasing anything to the press, at this time, I would suggest a cautionary note there, for the reason that the case pending before Judge Gesell is going to start next Wednesday. The Special Prosecutor's office is appropriately very concerned with any kind of last-minute publicity about anything and to the extent that the less said about these memos or anything else from this committee during the period up until through next—until the jury is sequestered next week, I know that would be appreciated by the Special Prosecutor's office.

Now, I mention that only because I have been instructed by you to contact the Special Prosecutor's office about their position with respect to the release of material.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I just want to get on the record that I was not on the mailing list for these memos and do not care to be on the mailing list for the memos, either majority or minority. You cannot leak that which you do not have. The fact that someone else leaks it I regard as unfortunate and I do not even want to have the opportunity unwittingly to do so. The memos may be helpful but I prefer to decide it with the *tabula rasa*, if I can.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I would be awfully careful about making any suggestion or ruling that memos or anything else prepared by the staff or by the minority or the majority be with either the minority or the majority. It seems to me that it is nonsense to suggest that there are not matters that we should have prepared for our request and at our request that ought not to be shared with the minority, any more than we ought to be invited into their caucuses or they into ours. For us to pretend that there is not some difference of opinion or interest is a flimsy sham that does not express reality. We have minority counsel, we have majority counsel, we have minority staff, we have majority staff. We have them for a legitimate and a proper purpose. I would hesitate very strongly before any breach of that customary and proper division of authority and responsibility is made in this particular committee; otherwise, we ought to stop any caucuses, we ought to stop referring to Mr. Jenner as minority counsel, we ought to stop referring to staff as minority staff and majority staff.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Well, the Chair cannot understand, though, how we cannot share with those who request an opportunity to see those memos, the memos that have already been made public. I just do not see it.

However, I think that on the cautionary note sounded by Mr. Doar, I was not aware of the fact that he had already received this response from the Special Prosecutor's Office. I think that while it may be well that the members have the memos, those that request them, I think we should withhold distribution of any of the other papers.

Mr. JENNER. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman.

In addition to our talks with the Special Prosecutor, I do want to remind you again that in my conferences with Judge Gesell, we have had three conferences with him, he stated several times to me that he was pleased with the rules of confidentiality and the adherence thereto by the whole committee; that he realized that there might be occasional individual breaches of that and hoped they would be reduced to a minimum. But he said that it would help his life very much if there were not a sudden burst of publicity approaching or near the time that he would begin to select the jury in the Plumbers case, which is an important case. I assured him, as I have reported to all of you, that the members of the House Committee on the Judiciary were all lawyers and they felt very keenly their professional responsibility, and I was sure they would keep in mind that fact.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I certainly think that at this stage in the game, the points made by Mr. Doar and Mr. Jenner and Mr. Jaworski and Judge Gesell are points which we simply cannot ignore or override. But I just want to point out that we got ourselves into this box because of the fact that we failed to face up to the necessity of releasing these materials as we went through them instead of doing it on a basis of one huge mass. It would be supremely ironic if, in our efforts not to prejudice the trial of lesser figures in the administration, we ended up prejudicing this investigation, which is apparently what we are doing.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I was only going to urge that the chairman reconsider in the light of what has been said whether these memos ought to be released to all members, all the memos, at this time. Indeed, perhaps the chairman's earlier position of embargoing all memos should be insisted upon until a time certain, at which time these and all other memos that may be subsequently written can be distributed to all members.

Mr. DENNIS. Mr. Chairman.

Mr. KASTENMEIER. I say that because there are perhaps 5 or 11 recipients of some of these memos, as I understand the numbers. If they are to be distributed to all 38 members, all these memos, at this time, then indeed they ought to be released to the press, it seems to me. You

only are really exacerbating the situation, increasing the chances of further leakage.

Mr. McCLODY. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. Mr. Chairman, I think on the basis of what counsel has said and in recognition of our own rule, it would not be appropriate to make this general distribution, including distribution to the press, unless the committee takes action in that respect. Otherwise, we would be violating our own rules.

The problem that occurs to me, however, is notwithstanding our actions, notwithstanding our own respect for our rules, what are we going to do about the Washington Post that already has these and what kind of restraint can be placed upon them? Because even though we do exercise restraint ourselves, they can do the very damage that you are trying to avoid through retaining a semblance of confidentiality.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Let us not confuse two different things here. I do not think, myself, that we ought to release these things to other papers or release anything else until at least this jury has been chosen. I am against that, just as I have been against all leaks. But these 14 memorandums, now, I would take a little caveat similar to Mr. Waldie's or Mr. Edwards' general proposition. I think we could sleep on that a little, maybe. You might want to have a memo prepared for you sometime that you do not have to give everyone. I do not have any. But that might be all right.

The point with these 14 memorandums is that they have already been given to the press. I do not care about giving them to other press: that is nothing to me. But the Post has got them, and 6, 8, or 10 members of this committee have got them. I think under those circumstances, when they are out in public and part of us have got them, it would be outrageous if we did not all have them. That should not wait on Judge Gesell or anything else.

Memorandums which have been leaked to the press should be equally available to all members of the committee. Now, that is simple.

Mr. DANIELSON. Would the gentleman yield?

Mr. DENNIS. Yes.

Mr. DANIELSON. I would just like for the record to have the record reflect that I was not on the mailing list for these memos and last Thursday evening, I requested a copy of each and they were provided, either on Thursday evening or Friday, I do not recall which. They remain in my safe; that is where they are going to remain.

But I tend to agree with Mr. Dennis. I do not know how—I am distressed that there has been a leak at all. But if they are in the hands of one newspaper, I cannot see how we compound anything by putting them in the hands of others. I just hope there will be no more.

Mr. FROELICH. Will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Wisconsin.

Mr. FROELICH. Inasmuch as we have had a problem over the last

few months on leaks, I think it would be appropriate if we published the list of those who received the memos.

The CHAIRMAN. Well, I think we have said enough on the subject. I am going to announce that in light of the fact that Mr. Doar advises me that there are some 100 paragraphs, Mr. Doar, to the Cox firing episode—and we have to listen to a tape of about 35 or 40 minutes—

Mr. DOAR. It is a little longer than that.

The CHAIRMAN. It would seem to me that unless we get through with about 50 or 60 of these paragraphs today, we are not going to meet our schedule. So the Chair may announce that we are going to have to work late tonight. So I advise members to keep their comments in that perspective.

Mr. DENNIS. Mr. Chairman, I understand we are going to get these 14 memos. Is that correct?

The CHAIRMAN. Those members who make requests will be—

Mr. DENNIS. I am making mine right now.

The CHAIRMAN. We are going on now. Mr. Doar.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Seated to my right is James Tim Oliphant, who graduated from the University of Colorado Law School in 1966. He served for 5 years in the organized crime and racketeering section of the Criminal Division of the Department of Justice. Before joining the impeachment inquiry staff, he was Chief of the Criminal Division of the Office of the Attorney General in the Virgin Islands. He was part of the task force and assembly team that worked on and assembled the materials to be presented to you today.

The other gentleman is William White, seated to my rear. The gentleman from Illinois will be delighted to hear that he graduated in 1969 from Northwestern University Law School. Before joining our staff, he served for 3½ years as an Assistant U.S. Attorney for the District of Columbia. He also worked on this particular task force and the materials to be presented to you today.

Mr. DOAR. Mr. Chairman, the four people that are with me today are George Rayborn, Hillary Rodham, Bob McGraw, and Jonathan Flint. Tab No. 1.

Mr. RAYBORN. Tab No. 1, on or about April 25, 1973, the President directed H. R. Haldeman to listen to and report on the taped conversation of the March 21, 1973, morning meeting among the President, John Dean, and Haldeman. Haldeman requested and received 22 tapes of Presidential conversations in February, March, and April 1973. That afternoon, Haldeman listened to the March 21 morning conversation and made notes from the tape. From 4:40 to 5:35 p.m., Haldeman met with the President and reported to him on the contents of the tape. The President concluded that Haldeman should listen to the March 21 tape again to ascertain the answers to certain points of doubt raised by the tape.

On or about April 24, 1973, Haldeman again received the group of tapes including the March 21 tape. He subsequently listened again to the March 21 tape and reported to the President. On April 26, 1973, Haldeman and the President met for approximately 5 hours, commencing at 3:59 p.m. and concluding at 9:03 p.m.

The committee has subpoenaed the tape recordings of the April 25 and April 26 conversations between the President and Haldeman, but has received neither the tape recording nor a White House-edited transcript of the conversations.

Mr. DOAR. These paragraphs that we will be presenting to the committee today and tomorrow deal with the period roughly from April 25 up until the present time. We are presenting two areas to the committee: One, the history of the Special Prosecutor's activities; and second, the President's continuing investigation, particularly up through the end of June 1973.

I wish the members of the committee would note that Mr. Haldeman's notes are found at 36.4 in volume II of this book. Those are the notes that Mr. Haldeman took of the March 21 tape when he listened to it on April 25.

We have gone over this material with respect to this tape before so we can pass to No. 2.

Mr. RAILSBACK. Mr. Chairman, may I just ask if the Special Prosecutor also subpoenaed this tape, which seems to me to be a very relevant tape? And is this under consideration now in Jaworski's appeal?

Mr. DOAR. I believe that it is, Congressman Railsback. I believe it is one of the tapes that they subpoenaed, but I do not have those documents here. I will advise you at noon on the justifications. We have started them. I have brought the subpoenas. I cannot tell you from that, but I will advise you at noon.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I think there is an ambiguity in the second sentence of this paragraph of information. It says that Mr. Haldeman received 22 tapes of Presidential conversations in February, March, and April 1973. Do you mean to imply that those were the months in which Mr. Haldeman received them, or are you referring to Presidential conversations that took place in that time?

Mr. DOAR. You are right, there is an ambiguity. We are referring to conversations, Presidential conversations that took place in, and that should be inserted.

Ms. HOLTZMAN. Thank you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Doar, I believe in reference to your reference to 36.4 in volume II, you did not mention which book.

Mr. DOAR. It is this book, number IX.

Mr. DONOHUE. I would like to inquire if, among the 22 tapes that were delivered to Haldeman was the tape with the 18-minute erasure? Was that among the 22?

Mr. DOAR. No, it was not, not on these dates.

Mr. JENNER. Mr. Donohue, you will find under tab 1.3 Mr. Bull's check-in and checkout record of what those 22 tapes were.

Mr. DONOHUE. Well, let me ask this: To your knowledge, was the tape with the 18-minute erasure at any time in the possession of Haldeman?

Mr. JENNER. Yes; we will have a subsequent paragraph on that.

Mr. DONOHUE. Thank you very much.

Mr. McCLORY. Mr. Chairman, may I inquire as to some of these initials here?

CD and CR, WHT. What do those mean? That is in tab 1.3, the different conversations? I see these conversations in the Oval Office, then EOB is the Executive Office Building, I understand that. But I do not understand "CD," "CR," "WHT."

Mr. DOAR. "WHT" is White House telephone, I believe.

What are the others?

Mr. McCLORY. "CD" and "CR."

Mr. DOAR. "CR" is Cabinet room and "CD" is Camp David.

Mr. McCLORY. Thank you very much.

Mr. DOAR. Tab No. 2.

Mr. RAYBORN. Tab 2, David Young, former codirector of the special investigations unit (the "Plumbers") has testified that on April 30, 1973, Ehrlichman instructed Young to be certain that all papers involving the investigation of security leaks were put in the President's files before Young left the White House staff. Ehrlichman informed Young of his own resignation and that he was going to be putting some papers in the President's file before he left.

Mr. DOAR. We have distributed just two pages of David Young's testimony before the grand jury on May 16. In that, you will see that Mr. Ehrlichman indicated that he was going to put—this is on page 50—Mr. Ehrlichman said he had some papers that he was also going to be putting in the President's files. Tab No. 3.

Mr. RAYBORN. Tab No. 3, on April 30, 1973, the President announced that he had accepted the resignations of Haldeman, Ehrlichman, and Kleindienst and had requested and accepted the resignation of Dean. The President also announced the nomination of Elliot Richardson as Attorney General. The President stated that Richardson would have absolute authority to make all decisions bearing upon the prosecution of the Watergate case and related matters, including the authority to name a special supervising prosecutor for matters arising out of the case. The President pledged that he would do everything in his power to see that the guilty were brought to justice.

During late April, public calls were made for the appointment of a Special Prosecutor for Watergate matters and on May 1, 1973, the U.S. Senate adopted a resolution requesting the President to appoint a Special Prosecutor.

Mr. DOAR. Tab No. 4.

Mr. RAYBORN. Tab 4, on May 7, 1973, Richardson, Attorney General designate, announced that he had decided he would, if confirmed, appoint a Special Prosecutor. On May 9, 1973, the President stated that Richardson and the Special Prosecutor appointed by Richardson would have the total cooperation of the executive branch.

On May 10, 1973, Senator Scott informed the Senate Judiciary Committee that the President had told him he would not intervene in the selection of the prosecutor nor in the conduct of his office.

Mr. DOAR. Tab No. 5.

Mr. RAYBORN. Tab No. 5, on May 21, 1973, Richardson appeared before the Senate Judiciary Committee with Special Prosecutor Designate Archibald Cox. Richardson submitted to the committee a statement of the duties and responsibilities of the Special Prosecutor which

included a number of suggestions he had received from members of the committee and from Cox. The statement provided that the Special Prosecutor would have jurisdiction over offenses arising out of unauthorized entry into the Democratic National Committee headquarters at the Watergate, offenses arising out of the 1972 Presidential election, allegations involving the President, members of the White House staff, or Presidential appointees and other matters which he consented to have assigned by the Attorney General and that he would have full authority for determining whether or not to contest the assertion of executive privilege or any other testimonial privilege. The guidelines also provided that the Special Prosecutor would not be removed except for extraordinary improprieties. After Richardson's confirmation, the statement was promulgated and published as a formal Department of Justice regulation, effective May 25, 1973.

Mr. DOAR. I think the members of the committee would want to mark 5.2, which is the order establishing the Office of the Watergate Special Prosecution Force.

If you will turn to 5.2, you will see that there are three bases or three legs to the Special Prosecutor's jurisdiction. The first leg is jurisdiction over offenses arising out of unauthorized entry into the DNC headquarters at the Watergate.

The second leg is offenses arising out of the 1972 Presidential election.

The third leg is allegations involving the President, members of the White House staff, or Presidential appointees.

Then there is also a catchall, but the three parts of the jurisdictional base come up again and again throughout this book. I think that the committee would want to have that order that was published by Attorney General Richardson in mind.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. May I ask a question with respect to 5.2? Probably the answer is obvious, but please clear it up for me.

In the authority of the Special Prosecutor which is set forth in 5.2, the jurisdictional areas which you have just described appear. Then the sentence appears:

Allegations involving the President, members of the White House staff, or Presidential appointees and any other matter which he consents to have assigned to him by the Attorney General.

Who is "he" and who is "him" in that context?

Mr. DOAR. "He" and "him," in my opinion, are the Special Prosecutor.

Mr. WIGGINS. I think that is probable.

Mr. DOAR. Tab No. 6.

Mr. RAYBORN. Tab 6—on May 22, 1973, the President issued a statement noting Richardson's selection of Archibald Cox and stating that Richardson had the President's full support in his determination to see the truth brought out. The President also stated that executive privilege would not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct in the matters then under investigation, including the Watergate affairs and the alleged coverup.

On May 23, 1973, the Senate Judiciary Committee voted to report favorably on Richardson's nomination and, on the same day, Richardson was confirmed by the Senate. Richardson was sworn in as Attorney General on May 25, 1973.

At the time of the swearing in, the President had a conversation with Richardson about the President's statement of May 22, 1973, according to Richardson, the President told him that the waiver of executive privilege as to testimony referred to in that statement did not mean that there would be any such waiver of executive privilege as to documents.

Mr. DOAR. This is the first time, as far as I can tell, that there cropped up a distinction in anyone's mind that there was a difference between testimony, oral testimony, and documents. But when we interviewed Mr. Richardson, he indicated that following his swearing in, he had a conversation with the President and the President told him that when he said that he was waiving executive privilege, he meant to waive it only as to oral testimony and not as to documents. Mr. Richardson kindly gave us an affidavit. It is at 6.4.

I wish you would look at 6.4, because we intended to bracket paragraph 2 and inadvertently, paragraph 4 was bracketed. That comes up later. But paragraph 2 you will see at the bottom of the page, where he said the "President referred to his statement on May 22 relating to the waiver of executive privilege as to testimony concerning Watergate and told me that his statement did not mean that there would be any such waiver of executive privilege as to documents." Richardson goes on, "I was not aware until then that the word 'testimony' had been used advisedly in the President's May 22 statement. I did not say anything in response to what the President told me."

I have looked back through the discussions that were held at the Senate when Attorney General Richardson was confirmed and I do not find any reference to this distinction. Tab No. 7.

Mr. SMITH. Mr. Doar, would you indicate that my book does not have any 6.4?

Mr. DOAR. Yes, I will, and I will take care of that. I apologize. Tab No. 7.

Mr. SEIBERLING. Mr. Doar, just to verify something, Mr. Chairman, did you mean to indicate that there was any occasion for Mr. Richardson to have said to the Senate that he was aware of any distinction, either before or after his confirmation?

Mr. DOAR. Well, my professional opinion is that the distinction between testimony and documents is a somewhat unfamiliar one for me and strained. My experience is that when you talk about testimony, implicit in that is that witnesses may be refreshing their recollection or matters may be proved from documents. I have never heard of a situation with respect to the assertion of any privilege where it would be waived for oral testimony but not with respect to documents that are in possession of the witness.

Mr. SEIBERLING. So is the implication that Mr. Richardson had any obligation, as a result of the President telling him that, to take any action?

Mr. DOAR. No; the implication, as I see it, was that no one, when they were drawing this charter, that distinction was not raised, discussed, or alluded to.

Mr. WIGGINS. Mr. Chairman?

Mr. DANIELSON. Mr. Chairman, point of clarification again. Could counsel advise us, inform us as to whether there have been any judicial decisions making a distinction, if any, between oral communication and a magnetically or mechanically recorded version of the oral conversation? It seems to me if there is a distinction between documents and testimony, a recorded oral conversation would be somewhere in between—if there is such a distinction.

Mr. DOAR. I do not know of any cases. I will look and search and see.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Doar, tab 6.4 is the affidavit of Elliot Richardson, which was signed by him yesterday or the day before yesterday.

Mr. DOAR. Yes.

Mr. WIGGINS. And apparently prepared shortly before that.

Mr. DOAR. Yes.

Mr. WIGGINS. Did you have a conversation with Mr. Richardson prior to taking his affidavit?

Mr. DOAR. Oh, I did.

Mr. WIGGINS. Did you discuss all matters relating to the impeachment jurisdiction with Elliot Richardson or just this sole subject?

Mr. DOAR. No; Mr. Jenner and I interviewed him fully for 4 or 5 hours, 1 month or 6 weeks ago.

Mr. WIGGINS. Did you obtain any other affidavits apart from the one which is in the tab?

Mr. DOAR. No; we did not.

Mr. WIGGINS. Does the tab then contain Mr. Richardson's entire recollection of matters relevant to our inquiry?

Mr. DOAR. No; it does not. It is not intended to.

Mr. WIGGINS. Are you planning to present subsequent affidavits which bear upon our inquiry from Mr. Richardson?

Mr. DOAR. No, we are not.

Mr. WIGGINS. Did he tell you of anything of importance to this committee that is not in the affidavit?

Mr. DOAR. No; he did not.

Mr. WIGGINS. I would like to let it stand right there, but go ahead.

Mr. DOAR. The other things he told us were all contained in his testimony, to my recollection, that he had already testified to before the Senate.

Mr. WIGGINS. There is nothing contradictory in his testimony before the Senate and what he talked to you about yesterday?

Mr. DOAR. No.

Mr. WIGGINS. Thank you.

Mr. DOAR. Nor is there anything intentionally withheld that we think is pertinent to the inquiry. But it may not be complete.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Chairman, I do want to say that Mr. Doar and I

talked over this matter and his statement and making his observations with respect to a possible distinction between testimony and documents, that I share his views.

I might supplement, Congressman Danielson, Mr. Doar's response to your last question. That is that the law is that if you waive as to testimony, that likewise is a waiver as to all relevant documents with respect to that testimony.

Mr. DRINAN. Mr. Chairman, point of clarification.

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Counsel, I wonder if the official regulation that is set forth on 5.2 in any way reflects the qualification placed by the President upon what is available?

Mr. DOAR. No; it does not. It does not.

Mr. DRINAN. That was promulgated, however, after that conversation?

Mr. DOAR. No—it was promulgated after, but the gist of it was before. It was set forth before.

Mr. DRINAN. There was no change made in that document subsequent to the conversation of Richardson and the President?

Mr. DOAR. No.

Mr. DRINAN. Thank you.

Mr. WALDIE. Mr. Chairman.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Did Mr. Richardson explain why he has never made this public distinction before on behalf of the President?

Mr. DOAR. No; he did not.

Mr. WALDIE. It seems to me an enormously important distinction. In the Senate testimony, do I gather there was no reference to this distinction, or was there any misleading impression left? Do we have the Senate testimony on this point in our book?

Mr. DOAR. My recollection of the Senate testimony, and I read it rather carefully, is that it was never referred to. And in the hearings, Congressman, in the fall, after Mr. Cox had been discharged, it was not referred to at that time, either.

Mr. WALDIE. The reason I ask is that it says "This affidavit supplements my testimony in November 1973." Why does he use that? I do not understand that. Why would he use the phrase "This affidavit supplements my testimony?"

Mr. DOAR. Paragraphs 2, 3, and 4 he talked about before the Senate, at least to some extent. But with respect to this paragraph, I do not believe he did.

Mr. WALDIE. Well, two is the critical paragraph. Did he talk about this distinction in the Senate?

Mr. DOAR. I do not believe he did.

Mr. WALDIE. I wonder if the staff would be able to provide us with an analysis of that Senate testimony. I do not understand why he would use the phrase "this supplements my testimony before the Senate" of that date.

Mr. DOAR. Well, my understanding, and I did not take the affidavit from Mr. Richardson or participate in it, although I did make the arrangements for it and explain generally what the matters were that we thought were pertinent to the inquiry that had not been already

covered in the Senate testimony—there are 5 paragraphs in the affidavit. Four of them are operative paragraphs. With respect to paragraphs 3, 4, and 5, they do supplement testimony that he made at the Senate committee at one time, following the time that Mr. Cox was discharged. It does not with respect to this and it may just have been an inaccuracy in the choice of words.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, the guidelines set forth in tab 5, which are later incorporated into the regulations promulgated by Mr. Richardson 5 days after he was sworn in, those guidelines had been agreed to, as I recall, by General Haig, but not specifically by the President. Could you—

Mr. DOAR. I do not recall General Haig having anything to do with these guidelines.

Mr. OWENS. When he testified on May 1 before the Judiciary Committee of the Senate, that was my recollection, but you say that was not true, that no one in the White House apparently approved of those guidelines?

Mr. DOAR. Well, I think that—I do not recall that Attorney General Richardson testified that he discussed the guidelines specifically with anyone in the White House. As a matter of fact, I think he took the position that this was his, the President had given him the authority to appoint the Special Prosecutor and lay out his charter and he was exercising that responsibility on his own.

Mr. OWENS. But it was based on those regulations that the district court in D.C. later held that the removal of Mr. Cox was illegal. Is that so?

Mr. DOAR. It was these regulations that the district court relied upon in that decision. Tab No. 7.

Mr. RAYBORN. Tab 7, on May 30, 1973, Special Prosecutor Cox requested Special Counsel to the President J. Fred Buzhardt to be sure that steps had been taken to insure that nothing was put into or taken out of any of the White House files affecting the Watergate investigation and other matters within the Special Prosecutor's jurisdiction. Cox stated that he would also like to know what security measures were in force and when they were put into effect with respect to such files.

On June 1, 1973, Buzhardt wrote Cox describing security measures in effect with respect to the files and stating that the protection and disposition of Presidential papers was a matter for decision of the President.

Mr. DOAR. The first written communication by Mr. Cox to the White House, to Special Counsel, Mr. Buzhardt—and Mr. Buzhardt was the man that Mr. Cox dealt with throughout his tenure as Special Prosecutor—raised the question immediately of the security of the files. You will see behind this tab Mr. Cox pressing his concern and specifying at 7.1 the files that he was concerned about—the files of Mr. Ehrlichman, Mr. Haldeman, Mr. Dean, Mr. Hunt, Mr. Krogh, Mr. Young, all the files pertaining to Ellsberg or the Pentagon Papers' leak, other files pertaining to the Plumbers operation, and tapes removed from the FBI to the White House. That is probably a misstatement there, because those refer to the logs.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Mr. Doar, when David Young refers to putting papers in the Presidential file, do your records support or contradict that they later are interpreted to be Presidential papers? Is there a distinction between the two?

Mr. DOAR. No; there is no distinction between the Presidential files and Presidential papers, but there is a kind of indefinite definition of what are Presidential papers. There is testimony that papers are taken from, on occasion in the White House, from one file and put into another file, into the Presidential papers file, by White House staff employees when they leave the White House, or at the direction of a senior White House staff official, or just before they may be called to testify before the grand jury or the Senate select committee. There is evidence——

Mr. RANGEL. So that all of the papers that could have been used by the Plumbers or that are requested presently by some of the defendants could probably now be determined to be Presidential papers as opposed to papers that had been prepared by staff before the transfer?

Mr. DOAR. That is the way President Nixon has so construed the definition of Presidential papers.

There are three categories generally, Congressman Rangel, of papers at the White House, as I understand it from Mr. Cox's testimony and on the basis of our investigation. One is what you might call personal Presidential papers, which are the President's notes, the Presidential tapes of Presidential conversations, and then Presidential dictabelts of his recollection of conversations. That is one clear category of documents—Presidential notes, Presidential tapes, and Presidential dictabelts.

Then there is a large category that may well contain thousands of documents called Presidential papers. My understanding is that all of Mr. Ehrlichman's and all of Mr. Haldeman's and many of the papers of other officials of the White House have been placed in an area, a number of rooms, and designated as Presidential papers.

Then there is the other working files in the White House which are known as White House files, which contain all the vouchers for travel and ordinary memorandums that come and go from the President and to the President or from staff assistants to persons in the executive branch, and so forth.

Mr. RANGEL. But for our purposes, that category two makes it significant that the President would tell Mr. Richardson that he did not mean documents when he said executive privilege. It would be for that second category of staff papers that could be considered to be Presidential papers and therefore subject to the privilege?

Mr. DOAR. That is correct.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you. As these paragraphs are now read, the distinctions made and the statement made by Mr. Doar will begin to develop for you, including reports of actions of Mr. Ehrlichman and others commencing April 30, when they resigned, the practice of plac-

ing their various files and documents and papers in the so-called Presidential file. I think you will obtain the flavor as these paragraphs are read that at least at the minimum, Mr. Haldeman, Mr. Ehrlichman, and others were of a state of mind that if their files were transferred to the Presidential file category, those came, as stated in the last sentence in seven, that the protection and disposition of Presidential papers was a matter for decision of the President and that Mr. Buzhardt thereafter acted accordingly.

I would like also, Mr. Chairman and ladies and gentlemen, to say to you that paragraph 7, as Mr. Doar has stated to you, is the first letter, the first assertion and statement by the Special Prosecutor relative to insuring security of all documents and tapes and matters of that character. And as you reach pretty soon some subsequent paragraphs, you will have that in mind in determining whether that security reassurance was followed out very religiously.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, does Mr. Cox's letter of May 30 have any legal significance in the sense that is he writing this in behalf of the grand jury and would any removal of files after this letter constitute any offense? Or is this letter just simply one without legal effect?

Mr. DOAR. Well, I think, Ms. Holtzman, that he was not writing on behalf of the grand jury, he was writing as Special Prosecutor conducting an investigation. I do not know that, absent any showing of deliberate secreting or destruction of documents, which might, under certain circumstances, constitute an obstruction of justice, there would be no legal significance to the letter in and of itself.

Ms. HOLTZMAN. Thank you.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I have a couple of questions.

Let me ask you, on this issue of executive privilege and waiver thereof, do you think or are there cases, would it be possible to say, well, I waive executive privilege as to testimony but not as to documents? If you expressly did it, could that be effective?

Mr. JENNER. Congressman Hungate, subject to the rule of the reach of waiver—that is, the rule of law is that if you waive as to testimony, you waive as to documents relative thereto. You cannot make a sort of half waiver. But subject to that, it is possible to draw and state a limited waiver.

Mr. HUNGATE. If this had been done—I am not saying it had not been done.

Mr. JENNER. It is a dangerous thing to do, to draw a waiver in this area that is precise enough to protect you against the court holding that it is a complete waiver.

Mr. HUNGATE. And there would be no question at all, I suppose, if the word used had been "evidence" instead of "testimony"? It would clearly have covered evidence of all kinds?

Mr. JENNER. That is correct.

Congressman Hungate, you will recall as chairman of the subcommittee that reviewed the Federal rules that for instance, taking up the matter of tapes, one of the rules, I think in article 9, does include tapes, recordings, and whatnot in the area of documents.

Mr. HUNGATE. Thank you.

One other area I wanted to go into is I noticed at 5.2 again, this order is if I read it correctly, it is dated May 21 effective as of May 5. Is this a customary practice and is this a valid practice?

I raise that because I seem to recall in the Special Prosecutor legislation that when they unfrocked Mr. Cox, they did something of the same thing, that there was an order made today that as of 1 week ago, he did not have any authority.

Mr. DOAR. I cannot give you the answer as to whether or not—

Mr. HUNGATE. Do you see that to which I refer?

Mr. DOAR. Yes; I do.

Mr. HUNGATE. I wish you would check it. I would like to know if that is a valid or legal practice—it is nunc pro tunc, I guess—that effective as of May 5, we did this.

Mr. JENNER. That is effective in court orders. I think it is also—

Mr. HUNGATE. I would appreciate some help in this.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. May I just ask you this, Mr. Jenner, there is no other statement, is there, or is there any place elsewhere the President states a flat waiver of executive privilege? He has always maintained a limited waiver of executive privilege, has he not, to the extent that he does waive it from time to time and as he states in this respect, with regard to testimony.

Mr. JENNER. In the areas in which we are presenting the committee and have presented his waivers have always been with respect to a particular tape or a particular document, or a waiver as to members of the White House staff testifying before the Senate select committee or the grand jury. You are correct, his waivers have not been general waivers, they have been with respect to particular matters.

Mr. McCLORY. You are not stating that it is not appropriate to make a limited waiver of executive privilege or any privilege?

Mr. JENNER. No; I am not by any means. All I am saying is it has to be carefully worded.

Mr. SEIBERLING. Would the gentleman yield on that? Mr. McClory?

Mr. McCLORY. I yield to the gentleman from California.

Mr. WIGGINS. Well, only just a question to counsel. How does that square with your earlier assurance to us that the waiver, partial waiver with respect to testimony includes within it a waiver with respect to documentary evidence? Is it not possible to make limited waivers in that area as well?

Mr. JENNER. In my professional judgment, it is not.

Mr. SEIBERLING. Would the gentleman yield?

Mr. WIGGINS. It is not in that case, but it is in the latter case that you have just described to Mr. McClory? I just want to get your thinking with regard to it.

Mr. JENNER. My thinking and experience is that if you attempt a partial waiver as to testimony, and that testimony includes references and reliance on documents, for example, just take that example, the waiver as to testimony extends to the relevant documents embraced in that testimony.

Mr. SEIBERLING. Would the gentleman yield?

Mr. McCLODY. The question that I asked was whether there were any other general waivers than the reference that the President specifically made in his own statements, and there is no other?

Mr. JENNER. There is none to my knowledge.

Mr. McCLODY. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Well, we have also discovered, I take it, that in dealing with Presidential waivers of privilege, possession is nine points of the law?

Mr. JENNER. I am afraid you are right about that.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab No. 8.

Mr. RAYBORN. Tab 8, on June 4, 1973, Cox wrote Buzhardt requesting more precise assurance on security measures with respect to certain White House files that Cox had specified.

On June 5, 1973, Cox wrote Buzhardt supplementing the list of files and stating his references to "files" included all diary and logs of telephone calls.

Mr. DOAR. Mr. Cox found Mr. Buzhardt's answer to his letter of June 1 about the security measures to be vague, and he wanted to be very specific about the maintenance and the protection and the security of the files. In his letter of June 4, therefore, he wanted to be sure that there was nothing that was going to be put into the files.

This is at the bottom paragraph, or taken out of the files. And he pointed out to Mr. Buzhardt that, "Giving an individual access to his files from his own office merely in the presence of a Secret Service agent," did not guarantee that nothing be taken out or put into the files or in any way, other way altered. Then he said, "Precise assurance on the security measures I requested is in the interest of everyone concerned. Accordingly, I wish you would let me hear from you more specifically about these exact points."

Later on, in a tab further down, Mr. Buzhardt does give many subsequent assurances. I will find that later and call it to your attention. Tab No. 9.

Mr. RAYBORN. On June 4, 1973, the President listened to tapes of his conversations with John Dean in the months of February and March 1973. At various times during the day the President spoke with Haig and Press Secretary Ron Ziegler about the content of the tapes. The President instructed Bull that he did not wish to hear the March 21 tape because Haldeman had notes on it.

At another point, the President said that he did not need the March 21 and April 15 tapes because he had those. After listening to the tapes, the President telephoned Haldeman; his diary indicates that he spoke to Haldeman from 10:05 to 10:20 p.m., and from 10:21 to 10:22 p.m.

Between April 30, 1973, and June 4, 1973, the President spoke with Haldeman by telephone 25 times and met with him 7 times.

Mr. DOAR. I would like to explain to the members of the committee how the committee staff came in possession of this tape. This tape was voluntarily produced to the Special Prosecutor's Office by the White House on a request by them after the subpoenaed tapes had been furnished pursuant to the decision of the court of appeals. Thus, when the President agreed to turn over all the material that he had

furnished to Mr. Jaworski, he, the President furnished this tape to us. We were able to get an improved transcript of that tape by reason of the equipment we used, and by reason of having made a re-recording of the tape at the White House.

This tape is a 6-hour tape, and we have reduced the portions that we think are pertinent to the inquiry to somewhat less than an hour, and are prepared to play them for you now. Much of the rest of the tape is inaudible or unintelligible for the reason that it is just a recording of the President sitting and listening to the playing of the tape, and the equipment was not good enough to pick that up. But, during that conversation, during the playing of the tapes he stops on occasion and discusses what he has heard with either Mr. Haig, General Haig, or with Mr. Ziegler, and then Mr. Bull comes in and out of the room and makes arrangements and sets up additional tapes and gets them for him.

If you will look at 9.1 before we start——

The CHAIRMAN. Mr. Doar, before you do, the sentence that reads, "At another point the President said that he did not need the March 21 and April 15 tapes because he had those," that sentence is not clear to me. He didn't need the March 21 and April 15 tapes because he had those.

Mr. DOAR. That is what he said. Those are his words. Now, the fact of the matter is——

The CHAIRMAN. Does that mean that there are more than one tape of the April 15 and March 21 conversations?

Mr. DOAR. With respect to the March 21 tape, that is the tape that Mr. Haldeman had listened to on the 25th and 26th of April and took detailed notes of. And in this conversation there are two or three references to the March 21 tape.

With respect to the April 15 tape, that tape has never been located, and the testimony of the White House officials and the President's is that the tape ran out in the EOB at 2:22, and although the President may be referring to the tape for earlier in the day, there is no reference to that.

If you will look at 9.1, members of the committee, the President says in his statement, November 17, that he did listen to these conversations he had with John Dean in order to refresh his memory. And then he says, "All of the conversations to which I listened that day had taken place prior to March 21, 1973."

If you look at 9.2 you will see that the tapes were checked out, including the March 21 tape, and then there were some Executive Office Building tapes, and White House telephone tapes. A subsequent number, 25, for example, is a White House telephone recording subsequent to March 21.

We are ready now to play the tape.

Mr. DANIELSON. Mr. Chairman, one point of clarification on this. Does this listening of tapes here, the one you have just referred to, does this purport simply to be a receipt or a chargeout slip to Mr. Steven Bull, or is this the way they are originally maintained as an inventory of tapes?

Mr. DOAR. No; this is a chargeout. This is not the way they were maintained.

Mr. SEIBERLING. A further question, Mr. Chairman. The dates on that tab I take it are the dates of the tapes and not the date they were charged out?

Mr. JENNER. Correct; Mr. Chairman, I would like to say to all ladies and gentlemen of the committee, as Mr. Doar emphasized and Mr. Doar said, this is a difficult tape to listen to, and that I am sure the committee members will want to study the transcript at a subsequent time. You get, as Mr. Doar pointed out to you, the President listening to tapes, and then he suddenly utters something without you knowing what is on the tape to which he is listening, and it is very difficult to follow the conversation. And what it will require is subsequent study on your part.

Some of it you will catch immediately because you are informed and were heretofore about the presentation as to some of the subject matter.

[Playing of tape recording of part of conversation between the President and Ronald Ziegler on June 4, 1973.]

The CHAIRMAN. There is a quorum call on and we will have to recess. We will recess until 1:30. Have the pamphlets picked up.

Mr. JENNER. Mr. Chairman, also the grand jury testimony should be picked up.

The CHAIRMAN. Yes; the grand jury testimony also.

[Whereupon at 12:19 p.m. the committee was recessed to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. Come to order. Will you tell us what page?

Mr. OLIPHANT. The top of page 24.

[Whereupon, the committee resumed listening to tape of conversation.]

The CHAIRMAN. We will have to go; the second bells have rung at 2:20, so we will vote and then we will come back as soon as this vote is over.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Mr. JENNER. Page 58 at the top.

[Resumption of listening to tape recording.]

The CHAIRMAN. Now, will you collect the transcripts.

Mr. DANIELSON. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. As a matter hopefully of clarity, while we are getting to the next page, during the recess I talked with the head technician briefly over there, and his understanding was on the startup and shutoff of a voice-actuated piece of equipment that it probably takes like a half a second for the recorder to start going from a dead stop when sound commences, and it may run for from 5 to 10 seconds after the cessation of sound before it shuts off. He does not know; that is just his offhand opinion, but it helps me to understand the transcripts, and I thought I would pass the information along.

Mr. EDWARDS. Mr. Chairman, on page 52 in the middle where it is unintelligible they are referring to the Japanese movie, Roshomon.

The CHAIRMAN. OK. Mr. Doar.

Mr. DOAR. Mr. Chairman, in connection with that tab 9, members of the committee might want to note that we do have the February 28, the March 13 and the March 21 tapes of the conversations between the President and John Dean. We subpoenaed the 17th and 20th in our first subpoena and were furnished an edited transcript of the telephone conversation of the 20th. But, with respect to the 17th we received only edited transcripts of the discussion between the President and John Dean involving the Ellsberg break-in.

Subsequent to our learning about the discussion on this tape, we called this to Mr. St. Clair's attention, and the President is still considering whether or not to review the 17th tape and furnish any additional information voluntarily to the committee.

The other thing is that in later subpoenas we subpoenaed the conversation between the President and John Dean on the 27th of February, the 1st of March, the 6th of March, and that was on our subpoena that we issued, the last subpoena that we issued in June. And then we also subpoenaed on that subpoena the 6-hour meeting between the President and Mr. Haldeman on April 26, after Mr. Haldeman had listened to the March 21 tape, and someone asked whether or not that was one of the tapes that Mr. Jaworski had subpoenaed, and that is now before the Supreme Court, and the answer is that it is, so that most, if not all of the conversations between the President and John Dean that we do not have that the President referred to in February and March we have subpoenaed.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I would like to ask Mr. Doar, it seems to me that is a very relevant conversation that we tried to subpoena, and which apparently is subject now to pending litigation in the Jaworski appeal. I am wondering if we have any idea, or if we have talked to Mr. Jaworski at all about any of the eventualities if the court—I think the court is hearing oral argument on July 9—I wonder if we have any idea what the timetable is for the Supreme Court to make a decision, and I wonder if we have any intent to try to get today that tape and any other tapes that we think are particularly important or that we have subpoenaed?

Mr. DOAR. Well, the argument is—I have not talked to Mr. Jaworski about the matter. The court, of course, has not indicated when it would decide the matter, and then how it would decide it. I would assume, assume first that the court would decide contrary to the President's position that he has an absolute privilege or——

Mr. RAILSBACK. If I could just say, I am suggesting, as I read that sequence of events, it looks like to me it is a 5-hour conversation between the President and Haldeman and I just wonder if that would be so important in your judgment and maybe we will have to make the decision later, but it seems to me that particular conversation might be so relevant that we might want to take that into account in determining what our timetable is going to be.

Mr. DOAR. Well, I have proceeded on the theory that, of course, the committee would decide what the timetable would be for its decision but that the time would come for the committee to make a decision long before the Supreme Court, or sometime before the Supreme Court

would have decided the case and before those tapes would be available.

The CHAIRMAN. I would just like to remind the members once again that we are only through tab 9, and we have got about 41 more tabs to go before we recess for the day, and at this rate, we will probably get through at about 9 o'clock tonight. So, I intend to go on through until that time.

Mr. HUNGATE. Mr. Chairman, accordingly, I reluctantly ask, have any members of the committee heard the total 5 or 6 hours, or is it contemplated that they would?

Mr. DOAR. I do not think any member of the committee has heard the total 5 or 6 hours, and much of the 5 or 6 hours is unintelligible. There are some matters that were not included in here that are intelligible, but—

Mr. HUNGATE. Well, my reason for this is that this may be quite important, and I thought just to be sure that the committee is satisfied that the excerpting is properly done, that maybe one or two members would listen to it for themselves if the whole committee did not take the time.

Mr. DOAR. Congressman, you realize—I am sure you do—that the 5- or 6-hour conversation that Congressman Railsback is talking about is a different 5- or 6-hour conversation.

Mr. HUNGATE. I do, I think; yes, sir. But the answer is—

Mr. DOAR. No one has yet listened to it all.

Tab 10.

Mr. RAYBORN. Tab 10.

Mr. SEIBERLING. Are we not going to listen to the rest of this? Oh, you did?

Mr. DOAR. We did.

The CHAIRMAN. Yes. We are going to continue to go through now.

Mr. RAYBORN. Tab 10—on June 11, 1973, Cox wrote to Buzhardt that he had been informed that a conversation between the President and Dean on April 15, 1973, was recorded on tape and requested access to the tape. Buzhardt has testified that he spoke to the President about Cox's request.

On June 16, 1973, Buzhardt wrote Cox that the tape of a conversation between the President and Dean on April 15, 1973, was a tape on which the President dictated his own recollections of that conversation with Dean after it was finished, and that it would not be appropriate to produce that tape.

On June 20, Cox wrote to Buzhardt stating that according to Cox's information the President had offered the tape to Assistant Attorney General Henry Petersen while Petersen was in charge of the investigation. Cox again requested the recording of the President's April 15 meeting with Dean.

Mr. DOAR. Members of the committee, you may recall that early in the recording of the June 4 tape, there was a reference to whether or not Buzhardt knew about it, a discussion between the President and Haig. Although it is not entirely clear, you may want to mark your tab to reread that to see whether or not they were talking about the tape recording system on the 4th of June when they said that Buzhardt—the President did not believe that Mr. Buzhardt knew about it, and then Mr. Haig said, well, yes, he did.

Mr. Buzhardt has testified that he did not know about the taping system until the 25th of June.

The letter from Mr. Buzhardt to Mr. Cox is at 10.2, and at the bottom paragraph of 10.2, dated June 16, Mr. Buzhardt says:

The tape to which the President referred in his discussion with Mr. Petersen was a tape on which the President dictated his recollection of that conversation after it was finished. It would, of course, not be appropriate to produce that tape.

Tab 11.

Mr. RAYBORN. Tab 11—on June 11, 1973, Cox wrote Buzhardt requesting an inventory be made of the contents of any and all files of Mitchell, LaRue, Liddy, Strachan, Colson, Chapin, Ehrlichman, Haldeman, Dean, Hunt, Krogh, and Young, and files relating to the Pentagon Papers investigation and the special investigations unit.

On June 16, Buzhardt informed Cox that the President alone had the authority to order an inventory of the files and that Cox's proposal would be reviewed with the President.

On June 21, 1973, Cox wrote to Buzhardt renewing the request. Cox has testified that after a period of many weeks he was told by Buzhardt that there could be no agreement on such an inventory.

Mr. DOAR. Mr. Cox has testified that his idea in requesting this inventory was to limit the necessity for him and his attorneys to examine, peruse the files in the White House, that he felt that a sensible method of starting in this connection with his investigation would be for the White House to make an inventory of the documents contained in the files of the gentlemen listed in the tab, and then he would look at the description on the inventory and select from that those documents he wished to examine.

I would like to call your attention to Mr. Buzhardt's answer to that, which is of June 16. This is at tab. 11.2, and in the final paragraph of that letter Mr. Buzhardt again states unequivocally that—

The documents are under security precautions that have been described to you in my letters of June 1 and 12. As those letters make clear, these Presidential papers are in the custody of the President but are constantly guarded by Secret Service and access to them is carefully limited under rules that make certain that there can be no additions to, removal from, or alterations in any of the hundreds of thousands of documents to which you refer. These security arrangements insure the integrity of the impounded files pending the time when a decision is made on whether they should be inventoried.

Mr. Buzhardt's answer gives to the committee members some idea of the magnitude of the so-called Presidential papers file or the Presidential papers.

Then Mr. Cox's letter of June 21 again reiterates the need for those examinations. The tab is 11.3. It indicates the need for the documents as being indispensable to an intelligent investigation.

And then his testimony before the hearings of the Committee on the Judiciary at 11.4, and this was many weeks later, he was told by Mr. Buzhardt that there could be no agreement on such an inventory. That is at the beginning of the second full paragraph, that "The papers in that room are regarded as privileged."

He did say that some papers were turned over, and that was the ITT file that Fielding, Dean's assistant kept, and Strachan's political action memorandums. Tab No. 12.

Mr. RAYBORN. Tab 12, on June 13, 1973, Cox wrote Buzhardt and requested copies or excerpts from logs showing the dates and times

of meetings and telephone calls between the President and 15 named individuals. Cox has testified that he received documents showing meetings and conversations between the President and Dean, Halde-
man, Ehrlichman, Petersen, and Mitchell.

Haig has stated that Cox was told that the President had no meet-
ings with Strachan, Chapin, Liddy, and Hunt.

Mr. DOAR. Tab No. 13.

Mr. RAYBORN. Tab 13, on June 21, 1972, Cox requested access to the
ITT file that had been compiled by John Dean's assistant, Fred
Fielding.

On July 5, 1973, and on July 10, 1973, Cox repeated his request. On
August 13, 1973, Buzhardt told Attorney General Richardson that he
had told Cox that today that the White House would give Cox the
ITT file. Cox subsequently testified that he received the file.

Mr. DOAR. Mr. Cox's letter at 13.3 of July 10 is a summary of the
correspondence from the 1st of June to the 10th of July with respect to
progress being made in securing information with respect to that con-
tained in the documents at the White House. Tab No. 14.

Mr. RAYBORN. Tab 14, on June 22, 1973, Buzhardt sent to Cox
documents listing the meetings and conversations between the Presi-
dent and Henry Petersen during March and April 1973, showing
no contact between the President and Petersen on April 17, 1973, and
one telephone call on April 18, 1973. The President Daily Diaries
introduced into evidence before Judge Sirica on November 9, 1973,
show that Petersen met with the President on April 17, 1973, and that
Petersen had two telephone conversations with the President on
April 18, 1973.

Mr. DOAR. We received an edited transcript of the meeting on the
17th of April between the President and Petersen, but not of the
second phone call between the President and Petersen on the 18th,
which was made from Camp David.

The second phone call is the one in which Mr. Petersen tells the
President about the Ellsberg break-in, and that phone call, if you
look at the log of the President on the 18th, or if you first look at the
meetings and telephone conversations between the President, and this
is at 14.1, on the 18th you will see that there is that one telephone call at
2:50 to 2:56, and if you look at the log at 14.2, the sixth page of that
log, you will see the same telephone call at 2:50 to 2:56. And then the
next day, or on the next page, you will see a second phone call at 6:28
to 6:37.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. You have interviewed Mr. Petersen, have you not?

Mr. DOAR. Yes; we have.

Mr. McCLODY. And did you not get an affidavit from him with
respect to that telephone call?

Mr. DOAR. We did not get an affidavit. I think he testified to it
before the Senate select committee, and I think we included that
testimony.

Mr. McCLODY. We have that in the book, have we?

Mr. DOAR. We do. Not in this book, but the other book. Tab No.
15[16].¹

¹ The paragraphs of book IV were renumbered prior to publication. The numbers in brackets refer to the paragraph numbers in the printed volume.

Mr. RAYBORN. Tab 15 [16], on June 25, 26, 27, 28, and 29, 1973, Dean testified before the Senate Select Committee on Presidential Campaign Activities (SSC). He testified about various meetings with the President and made allegations concerning his own and Haldeman's, Ehrlichman's, Mitchell's, and the President's involvement in the Watergate case.

Mr. DOAR. Tab No. 16 [17].

Mr. WIGGINS. Counsel? Mr. Chairman, can I ask a question?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. For what reason did you put the New York Times summary in there of what Dean said before the Senate select committee?

Mr. DOAR. Just for the purpose of notice, broad public notice. We have not gotten access to the President's news summaries.

Mr. WIGGINS. I see. The purpose then is to indicate what the President may have done by reason of what was in the New York Times?

Mr. DOAR. That is right.

Mr. SEIBERLING. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Dean has previously testified before the Senate select committee, am I right?

Mr. DOAR. Pardon?

Mr. SEIBERLING. Prior to this June 4 tape, had not Mr. Dean testified?

Mr. DOAR. No, he had not.

Mr. SEIBERLING. Well, in other words, that has a bearing on the discussion in the June 4 meeting between the President and Haig and Ziegler, because they were evidently discussing then prospectively what Dean would say instead of after the fact?

Mr. DOAR. Well, that is correct.

Mr. SEIBERLING. Thank you.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. I just wanted to follow up or at least have a picture concerning the news summaries. You said that we cannot get access to those summaries that the President had prepared for him?

Mr. DOAR. Well, I do not believe—

Mr. MEZVINSKY. Or have we even requested them?

Mr. DOAR. I do not believe we have ever specifically requested them with respect to a particular summary. But—

Mr. MEZVINSKY. The reason I raise that is I remember we went into the ITT, and Mr. Kleindienst's testimony, and whether he was on notice of the fact that an incorrect or that perjury was going to be committed, whether he was on notice of that, and we then raised the point about the summaries. So, no attempt has been made specifically to find that out? I thought, and I assumed that at that time when the point was raised, that we would make the inquiry.

Mr. DOAR. Well, we haven't done that specifically. So, I just have to report to you.

Mr. MEZVINSKY. OK. That is fine.

Mr. SEIBERLING. Mr. Chairman, may I just ask one further question?

Mr. Doar, it seems to me that it would be helpful if we could have some indication here prior to this June 4 meeting as to what was the basis on which the President referred to Mr. Dean as a traitor, because evidently they had some inkling of what Dean was going to testify to. And my memory as to what was in the press or otherwise is insufficiently clear.

Mr. DOAR. Well, there were a number of meetings between the President and Mr. Petersen from the 15th of April though the 26th of April in which Mr. Petersen reported to the President as to the developments of the investigation. And part of the development of the investigation was what Mr. Dean and Mr. Magruder were telling the grand jury.

Mr. SEIBERLING. Well, that is not in this book however?

Mr. DOAR. Oh, no; it is in the last book. We will get you your cross-reference.

Mr. SEIBERLING. There ought to be a cross-reference at some point, it seems to me.

Mr. DOAR. All right.

Mr. SEIBERLING. Thank you.

Mr. DOAR. There was a—you may remember that in one of those conversations—I do not remember which one now—that the President asked Petersen if Dean was implicating the President. I cannot fix the date of that conversation, but somewhere in the—following the 15th of April and before the 25th, that first question arose. The President first asked that question. Then, of course, we just have to check to see what facts we have about public notice during the month of May.

I would like also for the committee to make another note at tab 15 [16], because either on June 25 or June 27, the President asked to have it flown out to him at San Clemente. That tab was included, or the proof of that was included in a later book.

The committee may wish to have in mind all of the steps the President took in connection with reviewing the tapes, and although the proof of this is equivocal because it is not certain exactly which one, it now appears that the tape that the President wanted was the 20th of March, although when Bull first testified or one of the officials of the White House first testified, he identified the tape, the one the President wanted, as the 15th of April. But if the committee members would just mark this as a cross-reference, that either between the 25th or the 27th of June, the President asked to listen to another one of these tapes during the month of March or April. Tab No. 16 [17].

Mr. RAYBORN. Tab 16 [17], on June 27, 1973, Cox wrote to Buzhardt formally requesting that the President furnish a detailed narrative statement covering the conversations and incidents mentioned in Dean's testimony before the SSC. Cox stated that it was important that the President's evidence be obtained without undue interference with the President's responsibilities.

Mr. DOAR. Tab No. 17 [18].

Mr. RAYBORN. Tab 17 [18].

Mr. DOAR. Let me just interrupt. Mr. Cox is saying to Mr. Buzhardt that under normal circumstances, the ordinary thing would be, when you had charges such as the kind Mr. Dean made, would be to inter-

view the witness or ask the witness to appear before the grand jury. Considering the Office of the President and responsibilities of the President, he would like to ask that the President submit a statement as to what his recollection was of the Dean-President Nixon conversations. This was at a time when only four or five people knew of the taping system.

Mr. WALDIE. What response—

Mr. DOAR. There was not much response for about a month, and then Mr. Buzhardt—when he did write back, it might not have been a month—was that the President would make a public statement at an appropriate time. I think that was on July 25. Mr. Cox wrote back and said he did not think that the public statement that the President would make in response to the events that occurred before the Senate select committee was what he needed as a prosecutor in connection with this very critical testimony and renewed his request for the narrative statement. Then I do not believe that there was any further response.

Mr. FLOWERS. What was the date that Butterfield responded on?

Mr. DOAR. Butterfield responded on July 16.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Was July 16 the date that Butterfield testified openly before the Senate select committee or the date that he responded in the private session to the questions of the staff on the Senate select committee?

Mr. DOAR. July 16 is the date he testified.

Mr. SARBANES. That was a Monday.

Mr. DOAR. My recollection is it was a Monday and he was interviewed the preceding Friday, July 13. Tab No. 17 [18].

Mr. RAYBORN. Tab 17 [18], on June 28, 1973, Fred LaRue pleaded guilty to a one-count felony information charging that he conspired with other unnamed persons to influence, obstruct, and impede the due administration of justice. The information charged a conspiracy to pay money to the defendants in *United States v. Liddy* for the purpose of obtaining their silence and specified as an overt act in furtherance of the conspiracy the receipt by LaRue of \$280,000 in cash on or about December 1, 1972, LaRue agreed to disclose all information in his possession and testify as a witness for the Government in any and all cases with respect to which he may have relevant information.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Do you have any information from Mr. LaRue concerning the alleged payment on the evening of March 21, 1972?

Mr. DOAR. Yes, we have.

Mr. COHEN. Subsequent to this tab?

Mr. DOAR. No, no.

Mr. COHEN. There is no information in the tab that I have read, this information that he pled guilty to.

Mr. DOAR. We would not ordinarily put it in, what our interview said in this connection.

Mr. COHEN. Do you put it in some subsequent place?

Mr. DOAR. No, we do not. We have not put in behind the tabs interviews with witnesses.

Mr. COHEN. Well, this a critical date, the March 21 payment to Hunt. LaRue was one of the people involved.

Mr. DOAR. That is right.

Mr. COHEN. Are we going to get the benefit of your talking with Mr. LaRue?

Mr. DOAR. We have that if the committee wishes to see it, yes.

Mr. DENNIS. Mr. Chairman?

Mr. COHEN. I would certainly be interested in finding out.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. If we are not going to get it in one of these books, are you planning to have LaRue here as a witness?

Mr. DOAR. Well, that is a question that the committee would have to decide.

Mr. DENNIS. Well, certainly, I think that LaRue and the man who paid the money both ought to be witnesses and the man who knew the date, they ought to be here. At least, if we are going to do it on the book, which I object to, they ought to be in the book at the very, very least.

The CHAIRMAN. The gentleman will have an opportunity to make that recommendation when we consider the question of witnesses.

Mr. DENNIS. Well, OK.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, I want to be sure I understand tab 17.1 [18.1]. It is an information filed by the United States against LaRue. Mr. LaRue entered a plea of guilty. Was that deemed to be a one-count information in which Mr. LaRue entered a plea with respect to that entire information?

Mr. DOAR. It is one-count information.

Mr. WIGGINS. All right, thank you.

Mr. DOAR. Tab No. 18 [19].

Mr. RAYBORN. Tab 18 [19], Richardson has stated that on July 3, 1973, Haig called him to complain about a news story that Cox was investigating expenditures relating to the "Western White House" at San Clemente. Richardson has stated that Haig told him that he ought to get Cox to issue a statement that Cox was making no such investigation. Richardson determined from Cox that he was not investigating San Clemente and Cox agreed to state publicly that he was not. Richardson has stated that he notified Haig that Cox had agreed to make a statement and that Haig told him that the statement was inadequate. Richardson has stated that the President broke in on the conversation and told him that he wanted a statement from Cox within an hour that Cox was not investigating San Clemente.

Mr. DOAR. This is another part of the affidavit of Mr. Richardson at 18.1 [19.1], paragraph 3, the second page of the affidavit. Paragraph 19 [20].

Mr. RAYBORN. Tab 19 [20], on July 6, 1973, Cox announced that the American Airlines Corp. voluntarily acknowledged it had made illegal corporate contributions to the Committee To Re-Elect the President (CRP) in 1971-72 and agreed to cooperate fully with the Special Prosecutor's office.

Mr. DOAR. The purpose of such a tab as this is just to give the com-

mittee a chronological picture of the activities of the Special Prosecutor during this period. Tab No. 20 [21].

Mr. RAYBORN. Tab 20 [21], on July 6, 1973, the President, in response to requests from the SSC, wrote to Senator Ervin that he would not testify before the committee and would not allow access to Presidential papers prepared or received by former members of his staff. The President stated that he would allow present and former White House staff members to testify.

Mr. DOAR. President Nixon's letter to Senator Ervin is cited at 20.1 [21.1]. The pertinent paragraphs are paragraphs 1 and 2. Tab No. 21 [22].

Mr. COHEN. Mr. Doar, just one other point that was raised earlier today is that in President Nixon's letter, he does refer in the middle of the page that on May 22, 1973, "I directed that the right of executive privilege as to any testimony concerning possible criminal conduct." So there has been reference to testimony as opposed to documents, has there not? That would be tab 20.1 [21.1].

Mr. DOAR. The President does not say here that when I said testimony on May 22, I was speaking of oral testimony, not documents.

Mr. COHEN. Well, he uses the word "testimony," though. At least he was drawing a distinction in his own mind between testimony and documents, whether that is a proper legal distinction or not. Would that be a fair inference?

Mr. DOAR. It is a fair inference of the President's state of mind; yes.

Mr. COHEN. Thank you.

Mr. DOAR. But Mr. Richardson said that was true.

But I want to add that in response to a question by Judge Sirica, Mr. Wright made this point in either the latter part of July or sometime in August during the hearings, August 29, in the hearings on the tape recordings, that when the President referred to this testimony, he was referring only to oral testimony and not to Presidential papers.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, do I understand that the President's response, according to Elliot Richardson, in making the distinction between oral testimony and documentary—was that limited to staff people, or did that include his own testimony? I would gather from this response to Senator Ervin, he asserts a privilege as to his own oral testimony also. Is that a contradiction, or did I misunderstand the extent of the privilege he was asserting, according to Richardson? Was it only for his staff?

Mr. DOAR. No; I do not believe that the President, when he talked to the Attorney General, was talking about his own testimony.

Mr. WALDIE. You were just talking about his staff?

Mr. DOAR. Yes; it is not specifically set forth, but that is the impression I have.

Mr. McCLODY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLODY. Referring to page 2 of the letter, Mr. Doar and Mr. Jenner, in the long paragraph, just before the bracketed part, there are two sentences that seem to bear out the specific distinction which the President has advanced. He says:

I recognize that your investigation, as in others of previous years, arguments can be and have been made for the identification and perusal by the President or his counsel of selected documents for possible release to the committee or their staffs. But such a course, I have concluded, would inevitably result in the attrition, and the eventual destruction, of the indispensable principle of confidentiality of Presidential papers.

Then he says, "The question of testimony by members of the White House staff presents a difficult but different problem."

I recognize that it is stretching a point on the principle, but don't you think the principle of confidentiality of documents and distinction between documents and testimony for a waiver are explicit? Did you have this in mind, Mr. Jenner, when you made your, expressed your professional opinion this morning?

Mr. JENNER. Yes, I did, Congressman McClory. I expressed my professional opinion that when there is a waiver as to testimony, necessarily, testimony includes that which the witness will talk about, including documents.

Mr. McCLORY. And you do not think that the President, if he possesses the executive privilege, has a right to delineate the limits of the waiver?

Mr. JENNER. I am expressing a professional opinion on the rules of evidence that apply at least in all other cases.

Mr. McCLORY. I appreciate the general rule, but I am just wondering about this distinction, this express distinction that the President made.

The CHAIRMAN. I think he is just stating a rule of evidence, and whether it applies to the President is something we have to decide.

Mr. McCLORY. Well, Mr. Doar?

Mr. DOAR. I did not mean to express that the President was not making this point. The point I made earlier was that the point was not made before the Senate at the time the Senate was considering setting up the Special Prosecutor's office and adopting the charter and voting on the confirmation of the Attorney General and voting to hire Mr. Cox. As far as Mr. Cox was concerned, they did not know this is the way the President construed—

Mr. McCLORY. So what you are saying is this is an afterthought or an elaboration—

Mr. DOAR. I do not mean to suggest any of that. I am merely saying it was not discussed at that time, as far as I know.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I say, and I am sure that the committee members realize that the issue before the Supreme Court is going to be this issue, the extent of the executive privilege, the absoluteness, to say it another way, of the executive privilege, because this is what the President is claiming here, an absolute executive privilege with respect to documents.

The CHAIRMAN. Well, we will wait for the Supreme Court to decide that.

Mr. DOAR. Tab 21 [22].

Mr. RAYBORN. Tab 21 [22], on July 10, 1973, Cox wrote Buzhardt that he was disturbed by the lack of progress in obtaining answers to his several requests concerning access to papers in the White House files, inventories to certain files, and access to the tape relating to the April 15 conversation between the President and Dean. Cox pointed

out that the delay was hampering the investigation of possible criminal offenses by high Government officials. Cox stated he was reluctant to report on his difficulty encountered in obtaining information from the White House or to seek legal process, but that he must insist upon a prompt, categorical response to each of his requests.

Mr. DOAR. Tab 22 [23].

Mr. RAYBORN. Tab 22 [23], in early July 1973, the President authorized Haldeman to listen to the tape of the September 15, 1972, conversation between the President, Haldeman, and Dean. On or about July 10, 1973, several tapes and a tape recorder were delivered to Haldeman at Lawrence Higby's home. Haldeman has testified that he took the tapes and the tape recorder to his home and listened to the tape of the September 15 conversation.

On July 11, 1973, Haldeman obtained and took home six additional tapes, including a reel covering conversations in the President's EOB office on April 15, 1973. Haldeman has testified that he did not listen to these tapes, and returned them and the tape recorder to the White House the following morning.

Mr. DOAR. At the President's news conference on August 22, at tab 22.1 [23.1], the President said that Mr. Haldeman only listened to tapes where he was present at the meeting with Mr. Dean. He said this on page 1018 of tab 22.1 [23.1] :

I asked him to listen to it in order to be sure that as far as any allegations that had been made by Mr. Dean with regard to that conversation is concerned, I wanted to be sure that we were absolutely correct in our response. That is all he listened to. He did not listen to any tapes in which only Mr. Dean and I participated.

Then Mr. Haldeman, before the grand jury, on two separate occasions explains how he listened to the September 15 tape. Then if you will look at the second time he testified, at 22.3 [23.3], page 1001—go back to 1000—

Question. Did you put any of the tapes on the machine which Mr. Bull gave you that evening?

Answer. No.

Question. Well, can you tell the court the reason for requesting the tapes of Mr. Bull and carrying them home that evening with the intention of listening to them and why you did not listen to them?

Answer. As I have said earlier, I am not able to specifically state the reasons for those tapes or even which tapes they were. My best recollection is that the reason I did not listen to them, in thinking about it that evening, as I recall, they covered meetings that I had not attended and that I would, therefore, not listen to them.

Tab 23 [24].

Mr. JENNER. Mr. Chairman?

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. In the statement at tab 22 [23], you do not note in the statement that the President stated that Mr. Haldeman had only listened to one tape when actually, 22 [23] and the subsequent tabs point out that Mr. Haldeman listened to quite a number of them.

Mr. DOAR. Well, my understanding, Congressman Edwards, was that the President authorized Mr. Haldeman to have the September 15 tape to listen to because he wanted Mr. Haldeman to verify what Mr. Dean had testified to in meetings in which Mr. Haldeman was

present. He only listened to the meetings in which he was present; and that with respect to the other tapes, there was a note that he had checked out these tapes.

If you look at 22.4 [23.4], if you look at the first tab behind there, on the 10th of July, he checked out two reels in the Oval Office on September 15 and the White House telephone for the period September 6–October 3. These were kept and returned 2 days later.

Then on the 11th, he checked out the Oval Office tape of the 13th, which was a conversation between the President and John Dean. Mr. Haldeman was not present.

The Executive Office Building, 3/20 to 3/23/73. There were a number of conversations there which Mr. Haldeman was present at some and was not present at others. He does not specify, because he said he did not listen to any of these tapes. He does not recall why he took them home.

That is the substance of his testimony.

Mr. EDWARDS. Thank you.

Mr. DOAR. Earlier, Congressman Edwards, some of these tapes had been furnished to Mr. Haldeman on the 25th and 26th of April, when he listened preceding his 6-hour meeting with the President.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman.

All the members of the committee have in mind, I am sure, that at this time, Mr. Haldeman was not a member of the White House staff, having resigned on the previous April 30.

You will also have in mind the earlier tabs of the assurances given to the Prosecutor that the tapes and other matters were being held in tight security by the President.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne?

Mr. MAYNE. Mr. Doar, on either of the logs shown at 22.4 [23.4]—rather, on neither does there appear to be any signature or initial by Mr. Haldeman at the time that he took them out. Am I correct on that? It would seem normal procedure to sign for them when you took them out, but if that last, those last initials are his, he seems to have signed only when he returned them.

Mr. DOAR. Well, Mr. Haldeman did not sign for them. Stephen Bull signed for them.

They went from the Secret Service agent to Stephen Bull and from Stephen Bull to Mr. Haldeman.

Mr. MAYNE. And Haldeman did not sign them out from Bull?

Mr. DOAR. Well, if he did, he did not sign on the Secret Service slip. This is the Secret Service slip kept in the safe where the tapes are kept, as I understand it.

Mr. MAYNE. Was there any written accountability by Haldeman for them during the period that he had them?

Mr. DOAR. Not to my knowledge.

Mr. MAYNE. Thank you.

Mr. JENNER. Mr. Chairman. He did testify that he received them, Congressman Mayne.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. We were told or some committee was told that the April 15 tape had run out. I notice in the tape we listened to today, there was specific reference by the President to Mr. Bull about the April 15 tape, and on this tab there is reference to the April 15 tape. When was it discovered that that tape had run out?

Mr. DOAR. I think it was discovered sometime in November—no, October 30.

Mr. COHEN. October 30 for the first time?

Mr. DOAR. Yes.

Mr. COHEN. What was the day of April 15? Was that a Saturday or a Sunday?

Mr. DOAR. That was a Sunday.

Mr. COHEN. Has there been any check to determine how many hours were taped during the course of that weekend? It might make a difference, for example, if they had 10 hours of conversation on the Saturday preceding that Sunday.

Mr. DOAR. The President did have a long number of meetings on Saturday with Mr. Haldeman and Mr. Ehrlichman at that office. Then he began meeting late Sunday morning with Mr. Kleindienst. The tape ran out at 2:22.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I notice that there are two reels dealing with the period April 15. There is one on tape EOB 4:11 to 4:16. Then I notice on tab 9.2, there is a tape from 4:10 to 4:20.

Are there two tape recordings for that period and both of them ran out? Can you explain that? I am rather confused.

Mr. DOAR. Well, I really cannot explain that, Ms. Holtzman, because there are two tape recorders in the EOB office, as I understand it. They are on timers and they kick off and kick on at 6-hour periods, regardless of the amount of tape that has been used.

Ms. HOLTZMAN. And they both cover the same period of time?

Mr. DOAR. Well, they should not. They do not necessarily cover the same period of time. But I cannot reconcile why a tape would run from 4:11 to 4:16 if it stopped at 4:15.

Ms. HOLTZMAN. And then also to have another tape or reel referred to as being from 4:10 to 4:20.

Mr. DOAR. Well, there are two reels. There are two reels.

Ms. HOLTZMAN. OK.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, how does the authorization of the President to listen to a tape, how is that conveyed?

Mr. DOAR. I do not know. Mr. Bull is the man who contacts the Secret Service. He gets directions, presumably, from the President, but I do not know that.

Mr. WALDIE. There obviously, then, is no record that we are aware of containing Presidential authorization, just a record as to when tapes are returned or taken out?

Mr. DOAR. That is right.

Tab 22.4 [23.4], just to direct your attention, is a record of a March

20 date on June 25, 1973, signed out by Mr. Buzhardt. That is that June 25 incident, when the President requested that a particular tape be listened to. We will come to that in book III. Tab 23 [24].

Mr. RAYBORN. Tab 23 [24], on July 10, 1973, Cox wrote to Buzhardt requesting: (1) copies of records of telephone conversations and meetings between the President and Clark MacGregor on July 5 and 6, 1972; (2) copies of Gordon Strachan's "political matters memoranda;" (3) a copy of materials in John Dean's "miscellaneous intelligence" files; (4) a copy of the logs showing what items from the safeguarded files had been copied by former White House staff members; and (5) records of items inserted into any White House file by Ehrlichman or Young on or after April 30, 1973.

Mr. DOAR. Tab 24 [25].

Mr. RAYBORN. Tab 24 [25], on July 12, 1973, Senator Ervin wrote to the President on behalf of the Senate select committee stating that the President's letter of July 6 conflicted with the committee's responsibility to ascertain the facts on matters it was authorized to investigate. On that day, the committee authorized the chairman to meet with the President to seek to reconcile the matter.

Mr. DOAR. Tab No. 25 [26].

Mr. RAYBORN. Tab 25 [26], on July 16, 1973, Alexander Butterfield, former Deputy Assistant to the President, testified before the SSC and publicly disclosed the existence of a system for automatically recording Presidential conversations. Also on July 16, the President wrote to Treasury Secretary George Shultz, directing that no officer or agent of the Secret Service give testimony to congressional committees concerning matters observed or learned while performing protective functions for the President or in their duties at the White House.

On July 18, 1973, the taping system was disconnected and custody of the tapes transferred from the Secret Service to the White House.

Mr. DOAR. Members of the committee may wish to mark tab 25.1 [26.1], which is the testimony of Alexander Butterfield. We have bracketed only a small portion of that testimony.

Mr. Butterfield, at 2074, testifies that the taping system was installed first in the Oval Office during the spring, summer, or early fall of 1970, and that also at the same time, there were installations made at the Executive Office Building.

Then outside the bracket at 2075, there is an explanation by Mr. Butterfield as to how the recording system works automatically. It is tied into the electronic system that indicates by a series of lights on a square box, about 10 by 10 inches, which has several lights on it, indicating where the President is at any particular time. When the light is on in a particular room, then that is a first release of the recording system; then when voices are heard, the machine automatically goes on.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Was the letter from the President to Mr. Shultz subsequent to Butterfield's public testimony to the Senate select committee?

Mr. DOAR. Mr. Butterfield testified on the 16th. I do not know whether the letter was written after or before that date.

You will note that above the letter, there is another letter to Senator Ervin written by Fred Buzhardt to the effect that—

This letter is to confirm the fact, stated to your committee by Mr. Alexander Butterfield, that the President's meetings and conversations in the White House have been recorded since the spring of 1971.

Mr. SARBANES. Was there any Butterfield testimony at any point subsequent to his testimony in the afternoon of Friday, July 13, in which he was asked the questions concerning the tapes and disclosed the system, that he reported that disclosure back to anyone in the White House?

Mr. DOAR. I do not know of any such testimony.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Did I understand you earlier to say that Mr. Cox was aware of the recording system prior to the date of Mr. Butterfield's testimony to the Senate select committee?

Mr. DOAR. No; I did not say that.

Mr. OWENS. There were requests earlier, I know, for recordings, but that was just a discovery process then?

Mr. DOAR. No; you will remember that in one of the conversations between the President and Henry Petersen, the President inquired of Henry Petersen on the 18th or 17th of April whether or not the grand jury or the prosecutor had offered immunity, promised immunity to Mr. Dean. Mr. Petersen said no, they had not, the prosecutors had not. And the President said, well, that they had, and I have got it on tape, and he offered to let Mr. Petersen hear it, and Mr. Petersen declined to hear it.

Now, subsequently, we know that Mr. Petersen was interviewed by the Special Prosecutor and he related that conversation to the Special Prosecutor. That was the reason for the request.

Mr. OWENS. Mr. Butterfield, though, had, prior to July 16, at a closed meeting with the staff, revealed the existence of this tape system, had he not?

Mr. DOAR. On the 13th.

Mr. OWENS. On the 13th, 3 days prior. Was there any reason to believe that that had gotten back to the White House that Mr. Butterfield had so testified?

Mr. DOAR. I think it had——

Mr. OWENS. The White House was aware prior to the 16th of the Butterfield testimony?

Mr. DOAR. My recollection is he was.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Mr. Doar, at tab 20.1 [21.1], there is a letter by the President to Senator Ervin stating that he was not going to appear before the committee and apparently, there was attached a letter thereto of President Truman, apparently dated in 1953, which I think ought to be included. The President asked that it be made a part of the select committee records.

Mr. DOAR. I agree with that. I am sorry it was overlooked. I will see that that gets in the tab.

Mr. SMITH. Thank you.

The CHAIRMAN. You may proceed.

Mr. OWENS. Just one other matter, Mr. Chairman.

I guess it was this tab 10 that I was thinking about where it indi-

cates Cox wrote to Buzhardt indicating that he had heard a conversation between the President and Dean on April 15 recorded.

Mr. DOAR. Well, that is the conversation that the President had with John Dean when he said to Petersen on the 18th that Dean told him that he had been promised immunity and that he had it on tape.

Next book.

Mr. FLOWERS. Mr. Chairman, could I ask Mr. Doar to recap very briefly one thing for me? We were interrupted so much during the recording that we listened to and the other matter. The June 4 recording, insofar as it made reference to a March 17 conversation between the President and Mr. Dean, what was the recap? What would be—can you give a concise recap of that?

Mr. DOAR. Well, the recap was that first of all, the President and John Dean discussed the Watergate matters—the Watergate, the break-in, and allegations involving the coverup. And they discussed Strachan and they discussed Sloan and they discussed the President saying that it had to cut off at the pass and concisely, it was the President's recollection or the President's summary of that conversation after having listened to it was that he and John Dean talked about the Watergate matter.

Mr. FLOWERS. Do we have a transcript of that?

Mr. DOAR. No; we do not. We asked for it, we subpoenaed it, and we got back an edited transcript of that conversation and all it contained was a discussion between the President and John Dean about the Ellsberg matter.

Mr. FLOWERS. Thank you.

Mr. SARBANES. How long was that conversation?

Mr. DOAR. That conversation was from 1:25 to 2:10—45 minutes.

Mr. SARBANES. And how long was the transcript which you got?

Mr. DOAR. I think it was three pages or four pages.

Tab 26 [27].

Mr. RAYBORN. Tab 26 [27]—on July 1, 1973, Cox wrote to Buzhardt requesting eight tape recordings of conversations between the President and various White House staff and others whose conduct was under investigation in connection with the alleged coverup of the Watergate break-in. Cox stated that the tapes were material and important evidence in an investigation of serious criminal misconduct.

Mr. DOAR. I think the members of the committee would want to look at Mr. Cox's letter in 26.1 [27.1] and look at the specifics of the request.

The first paragraph asks for a meeting on June 20, 1972 in the President's EOB office between 10:30 and 1 p.m. between the President and Mr. Ehrlichman and Mr. Haldeman. The President's diary later on developed that Mr. Ehrlichman and the President met first, or maybe Mr. Ehrlichman and Mr. Haldeman and the President met first and then later the President and Mr. Haldeman met alone. And later on, there was some discussion by members of the White House staff to the effect that the request did not cover the conversation between the President and Mr. Haldeman on that day.

Then there was a telephone conversation of June 20 between the President and Mr. Mitchell from 6:08 to 6:12.

Going back to No. 1, this particular conversation was never received because that is the 18½-minute buzz.

The second conversation was not received because it was not recorded because the conversation was on a telephone that was not part of the taping system.

The third conversation, on the 30th, that was a conversation for 1 hour and 15 minutes. Judge Sirica reviewed that tape and found a very, very small portion of it relevant to the Watergate matter. We have that portion of the tape.

The meeting of September 15, from 5:15 to 6:17—Mr. Haldeman joined this meeting at 5:27.

Members of the committee, this explains, I think, why there were two marks on that tape and why, when we made the recording down there, the extra 15 minutes of the tape were included. The fact was that the meeting—Mr. Haldeman and the President met from sometime after 3 o'clock that afternoon, and Mr. Dean joined the meeting at 5:27. So this is in error.

Then the meeting on March 13, 1973, in the President's Oval Office—that meeting was produced.

There was another meeting that was produced voluntarily, and I think the committee might want to note that, because there was the voluntary production of one recorded conversation before March 21. That was on February 28, a meeting between the President and John Dean.

Then there is the meeting on March 21 in the morning. That was produced. Then there was another meeting in the afternoon of March 21 that was produced, and then the meeting on March 22 that was produced, and the meeting on April 15 is the one where the recording system, the tape, had run out at 2:22 in the afternoon. That conversation was not recorded.

Mr. SEIBERLING. Mr. Doar, this only refers to the morning; is that correct?

Mr. DOAR. I know. We got also an afternoon meeting on March 21, and I am trying to recollect whether that was provided voluntarily or whether that came as the result of an amended subpoena. I will try to find that out.

Mr. SEIBERLING. But this one was produced; right?

Mr. DOAR. The morning, yes.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I was not clear on No. 4 where you said there was an error. I did not quite understand what you said.

Mr. DOAR. If you will look there, the meeting between the President and Mr. Dean was from 5:27 to 6:17. Mr. Haldeman had been in the meeting with the President before that time and Mr. Dean joined the meeting at 5:27. Whether this was an error that had cropped up first in the logs that the White House had furnished to the Special Prosecutor I just cannot say. But there were two marks on the tape, at 5:15 and 5:27. When we went down to take a copy off the tape, the Secret Service set the marker at the first mark on the tape, we have figured out now. That is how we got the tape from 5:15 to 6 o'clock.

Mr. DENNIS. OK. Thanks.

One other question, the first one, June 20, is the one that has the 18 minutes; is that right?

Mr. DOAR. That is correct.

Mr. FLOWERS. Mr. Doar, do you have any information when these tapes were voluntarily produced to the Special Prosecutor? When were they voluntarily handed over to the Special Prosecutor?

Mr. DOAR. I do not know the answer to that. I will have to find that out.

Mr. FLOWERS. Was this before the Cox firing or after the Cox firing?

Mr. DOAR. After.

Mr. FLOWERS. After the Cox firing.

Mr. DOAR. The afternoon tape of March 21 was specified in an amended subpoena.

Tab No. 27 [28].

Mr. RAYBORN. Tab 27 [28]—on July 20, 1973, Cox wrote to Buzhardt expressing his concern about the care needed to insure that the tapes were preserved intact and to protect their integrity as possible evidence. He requested Buzhardt to take all necessary steps to see that custody of the tapes was properly limited and fully documented.

On July 25, 1973, Buzhardt wrote to Cox that the tapes were being preserved intact. Buzhardt stated that the tapes were under the President's sole personal control and that they were being adequately protected under secure conditions. Buzhardt stated that all access to the tapes was carefully documented.

Mr. DOAR. The committee may wish to look at 27.2 [28.2], Mr. Buzhardt's letter of July 25. The second and third sentences of that letter are to the effect that—

The President has sole personal control of those tapes and they are being adequately protected under secure conditions. All access to the tapes is carefully documented.

Tab 28 [29].

Mr. RAYBORN. Tab 28 [29].

Mr. SEIBERLING. Mr. Doar, in view of the many examples we have of these being checked out by other persons, this statement that the President has sole personal control is a formal control, as I gather, and they are not actually under his physical control?

Mr. DOAR. Well, that would seem to be the inference, at least as of the 11th and 12th of July.

Mr. SEIBERLING. Thank you.

Mr. DOAR. And we have other examples later on where people check them out, presumably always under authorization from the President.

The CHAIRMAN. Would you kindly proceed?

Mr. RAYBORN. Tab 28 [29]—on July 20, 1973, Cox confirmed that Ashland Oil, Inc., and Orin E. Atkins, chairman of the Ashland Oil, Inc., board, voluntarily acknowledged making an illegal corporate contribution of \$100,000 to Maurice Stans of the Finance Committee To Re-Elect the President (FCRP) early in April 1972.

Mr. DOAR. Tab 29 [30].

Mr. RAYBORN. Tab 29 [30]—on July 21, 1973, Buzhardt wrote to Cox expressing regret that the White House had been much slower than it would have liked to have been in responding to Cox's requests. Buzhardt explained that only the President could resolve many of the questions raised by the requests and that during the period in question the President had had the summit meeting with Mr. Brezhnev

and had been hospitalized for 7 days. Buzhardt stated that he would have responses on many requests early in the following week.

Mr. DOAR. In Mr. Buzhardt's letter in the third paragraph, he makes it clear that all of Mr. Cox's requests raise questions that can only be resolved by the President himself; that the President must either claim or waive executive privilege personally; that under these circumstances, obtaining a decision from the President on sensitive questions that only he can decide is often not a speedy process. Tab No. 30 [31].

Mr. RAYBORN. Tab 30 [31], on July 23, 1973, Haig called Richardson. Richardson has stated Haig told him that the President complained about various Cox activities, including letters to the IRS and Secret Service from the Special Prosecutor's office seeking information on guidelines for electronic surveillance. Richardson has stated that Haig told him that if they had to have a confrontation, they would have it; that the President wanted a tight line drawn with no further mistakes; and that if Cox did not agree, they would get rid of Cox.

Richardson has stated that Cox agreed that the request for information contained in letters by his office to Treasury Department agencies had been over-broadly stated.

Mr. COHEN. Did you get these letters—

Mr. DOAR. I do not know that we have those letters, but Mr. Cox has told Mr. Jenner and myself that after review of the letters, he did narrow the request.

Mr. COHEN. In similar fashion as we did?

Mr. DOAR. Well, I would not agree that that is a fair characterization of our letter.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Do we know specifically what Mr. Cox was requesting when he wrote to Mr. Buzhardt regarding the IRS? We see here electronic surveillance, but that is not with the IRS.

Mr. DOAR. Well, I do not think, Congressman, that we intended to suggest that the letters to the IRS involved guidelines for electronic surveillance, but there was a complaint—

Mr. MEZVINSKY. Was he asking about personal finances? What was he asking about that was supposedly overly broad?

Mr. DOAR. Well, I just do not have that information at the tip of my tongue. I will have to get it for you.

Mr. MEZVINSKY. Do we have copies of that letter available, the Cox letter?

Mr. DOAR. I do not know. If we do not, we will get them. Tab 31 [32].

Mr. RAYBORN. Tab 31 [32], on July 23, 1973, Special Counsel to the President Charles Alan Wright informed Cox that he had been instructed by the President that the tape recordings requested by Cox would not be made available and that the President had concluded that doing so would not serve the public interest.

On July 23, 1973, the President wrote to Senator Ervin, stating that he had decided not to turn over the tapes to the SSC. The President stated that the tapes would not finally settle the central issues before the committee because persons with different perspectives and moti-

vations would inevitably interpret the comments on the tapes in different ways. The President also stated that the tapes could be accurately understood or interpreted only by reference to other documents and tapes.

Mr. DOAR. Tab 32 [33].

Mr. RAYBORN. Tab 32 [33], on July 23, 1973, the Special Prosecutor issued a subpoena duces tecum to the President on behalf of the Water-gate grand jury. The subpoenas required the production of materials relating to nine Presidential conversations, a memorandum dated March 30, 1972, from W. Richard Howard to Bruce Kehrli, and all "political matters memoranda" and all tabs or attachments thereto from Gordon Strachan to H. R. Haldeman between November 1, 1971, and November 7, 1972.

Mr. DOAR. That ninth conversation is the afternoon conversation of March 21. The March 30 memorandum is the memorandum that was written by Mr. Colson's assistant to Bruce Kehrli with respect to Howard Hunt's pension, and also was later stated according to Colson to be a termination notice to Howard Hunt as of March 30. No. 33 [34].

Mr. RAYBORN. Tab 33 [34], on July 25, 1973, Buzhardt responded by letter to Cox's request of June 27, 1973, for a narrative statement from the President. Buzhardt stated that at an appropriate time, the President intended to address publicly the subjects the SSC was considering, including Dean's testimony. That same day, Cox wrote Buzhardt and expressed his reservations that the President's public statement would be responsive to his request for a testimonial narrative, but that he would postpone making a decision on whether to renew such request until after the President's public statement.

Mr. DOAR. Tab No. 34 [35].

Mr. RAYBORN. Tab 34 [35], on July 25, 1973, the President informed Judge Sirica that he would decline to obey the subpoena issued on July 23, 1973, because to do so would be inconsistent with the public interest and with the constitutional position of the Presidency. The President agreed voluntarily to transmit the memorandum from W. Richard Howard to Bruce Kehrli and the memorandum from Gordon Strachan to H. R. Haldeman.

Mr. DOAR. Tab No. 35 [36].

Mr. RAYBORN. Tab 35 [36], on July 26, 1973, Judge Sirica issued an order requiring the President to show cause why there should not be full and prompt compliance with the subpoena.

Mr. DOAR. Tab No. 36 [37].

Mr. RAYBORN. Tab 36 [37], on July 30, 31, and August 1, 1973, Haldeman testified before the SSC. Haldeman told the committee that he had listened to a tape recording of a meeting between the President and Dean on March 21, 1973, from 10:12 to 11:55 a.m. that Haldeman had joined at 11:15 a.m. Using notes he had prepared while listening to the tape, Haldeman testified about the entire conversation between the President and Dean. Haldeman testified that on March 21, the President had told Dean that there was no problem in raising \$1 million but that it would be wrong.

Mr. DOAR. Mr. Haldeman's testimony is found at 36.2 [37.2] at pages 2892 and 2893. Mr. Haldeman says at the top "I was not present for the first hour of the meeting, but I did listen to the tape of the entire meeting, including the portion before I came in."

And then at page 2897 in the middle of the page Mr. Haldeman testifies as follows: "He" meaning Dean "also reported a current Hunt blackmail threat. He said Hunt was demanding \$120,000 or else we would tell about the seamy things he had done for Ehrlichman. The President pursued this in considerable detail, obviously trying to smoke out what was really going on. He led Dean on regarding the process and what he would recommend doing. He asked such things as—'well, is this the thing you would recommend? That we ought to do this? Is that right?' and he asked where the money would come from, how it would be delivered and so on. He asked how much money would be involved over the years and Dean said 'probably \$1 million—but the problem is that it is hard to raise.' The President said 'there is no problem in raising \$1 million, we can do that, but it would be wrong.'"

Mr. MEZVINSKY. Mr. Doar? Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Do you have any information as to any conversations between the President and Mr. Haldeman, either on this day or immediately preceding this testimony before the Senate Watergate Committee.

Mr. DOAR. No; we don't but we have this testimony. We have this testimony. Mr. Haldeman listened to the March 21 tape on the 25th of April, and he discussed it with the President thereafter and the President asked him to listen to the tape again and he listened to it on the 26th.

Mr. MEZVINSKY. What is the latest contact that we know of between Mr. Haldeman and Mr. Nixon?

Mr. DOAR. The latest contact I know of offhand is the telephone call on the evening of June 4 but we do know that Mr. Haldeman listened to the tapes on the 11th and 12th of July 1973. He took a tape home of September 15, a September 15 tape on the 11th of July and the President has said in a public statement that he asked Mr. Haldeman to listen to that tape on the 11th of July. So, presumably that is the last contact.

Mr. MEZVINSKY. OK. Thank you.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. On these notes of Mr. Haldeman's, is there somewhere in this information an indication as to when he made the notes? It is my understanding he made them while listening to the tape.

Mr. DOAR. Well, his testimony is that he made these on April 25.

Mr. DANIELSON. On April 25, 1973, while listening to the tape of the conversation of whatever date it was, March 21?

Mr. DOAR. March 21, yes.

Mr. DANIELSON. So when he testified before the Senate select committee he was refreshing his recollection from the handwritten notes which are in the tab?

Mr. DOAR. Well, that is what he testified to.

Mr. DANIELSON. And the handwritten notes were made in April when he was listening to the tape made in March?

Mr. DOAR. That is right.

Mr. DANIELSON. We do have the tapes of March 21. Thank you. I have the continuity.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Doar, on page 2892 of Mr. Haldeman's testimony he indicates Mr. Dean testified he was in on that meeting for only 5 minutes on March 21 and Mr. Haldeman's log indicates that he was in there from 11:15 to 11:55. Does this indicate that Mr. Dean's memory is faulty or Mr. Haldeman's logs?

Mr. DOAR. No; no. It indicates that Mr. Dean's memory was faulty.

Mr. LATTA. Thank you.

Mr. DOAR. The tape, Mr. Latta, has Mr. Haldeman coming in the meeting at about two thirds of the way through the meeting, and he was there through the rest of the meeting. Number 37 [38].

Mr. RAYBORN. Tab 37 [38], on or about August 9, 1973, Cox met with Richardson and requested a file of documents concerning campaign contributions by milk producers then at the possession of the lawyers in the Civil Division of the Department of Justice. Richardson called Buzhardt and told him that he wanted to turn the milk producers file over to Cox. Buzhardt later called Richardson and told him not to give the file to Cox.

Mr. DOAR. I think I will read tab 38 [39] too and then I will call attention of the committee to the material behind it.

Mr. RAYBURN. Tab 38 [39], on August 13, 1973, Cox wrote to Richardson to request access to files relating to the possible relationship between large contributions by the Milk Producers Association and the Government's decision to grant an increase in milk prices.

On August 13, 1973, Richardson wrote to Buzhardt to express his disagreement with the President's decision not to turn the milk files over to Cox. Richardson said that he could find no plausible basis for denying Cox access to papers which were available to other personnel in the Justice Department.

Mr. DOAR. Mr. Richardson's letter to Mr. Buzhardt is at 38.2 [39.2] at tab D, and Mr. Richardson says in paragraph 3:

Given other situations—e.g. the tapes—in which much more substantial interests are at stake, it seems to me undesirable to take a hard line in a case where cooperation wouldn't hurt. I would be glad to speak to the President directly on this matter but I would be quite willing for you to do so on my behalf, if that seems preferable.

Tab. 39 [40].

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I notice in Mr. Richardson's testimony at tab 37.2 [38.2] that he states that he is forbidden to turn these campaign contribution materials over to the Special Prosecutor because they are Presidential documents. Is Mr. Richardson's testimony that the President was claiming executive privilege with respect to the campaign contributions material regarding the dairy industry? This is page 267, starting at the bottom of the page right after the bracketed material.

Mr. DOAR. He is saying, as I understand it, he is saying that the President, through Mr. Buzhardt, was taking the position that these documents were Presidential papers and was claiming executive privilege over them.

Ms. HOLTZMAN. Thank you.

Mr. DOAR. Tab number 39 [40].

Mr. RAYBORN. Tab 39 [40], on August 14, 1973, W. Richard Howard

was directed by the grand jury to produce the original carbon copy of a March 30, 1973, memorandum he wrote to Bruce Kehrli concerning E. Howard Hunt. On August 27, Cox wrote to Buzhardt requesting that this document be supplied to the Special Prosecutor. On September 5, Buzhardt provided the requested documents and informed Cox that the authority to control documents in the physical custody of the White House employees was exclusively a matter for Presidential decision.

Mr. DOAR. 39.2 [40.2] sets forth Mr. Buzhardt's position with respect to physical documents, the particular documents in the physical custody of a current employee of the White House, the fact that that does not alter that such documents are Presidential papers for which the authority to control is exclusively a matter for Presidential decision. "Accordingly, requests for such documents should be addressed to him so that the requests may be considered by the President."

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, I still don't understand on what basis there was a denial to the prosecutor for access to the milk files. They were in the hands of the Department of Justice and they weren't in the Presidential files, they weren't in employees of the White House files. I gather he said executive privilege, which hardly anyone could concur in. Did Richardson concur that executive privilege attached to the milk files?

Mr. DOAR. I don't know whether he concurred but I think he indicated that was the position that had been taken.

Mr. WALDIE. Well, I may, but did he—I forget what happened. Did he turn them over to Cox? What was the outcome?

Mr. DOAR. They were turned over to either Mr. Cox or Mr. Jaworski because a number of files were turned over to us and at the time that they were turned over to us they were broken down into two categories. And there was one category that Mr. St. Clair and Mr. Buzhardt gave to us automatically, and I mean just released them and the other they said that they still had pending in a court suit a claim of executive privilege covering some 59 documents and they asked if we would inspect the documents down at the White House so that there would be no claim that somehow the White House waived their position with respect to executive privilege with respect to those documents.

Mr. WALDIE. But those documents are different, they are in the White House.

Mr. DOAR. Well, I think these documents may well—I don't know whether those documents were ever in the Civil Division at that time or not.

But, I have always assumed, maybe mistakenly, these were the same documents, but I don't know.

Mr. WALDIE. I gathered from Richardson's testimony they were in the Department of Justice.

Mr. DOAR. They were.

Mr. WALDIE. And not at the White House.

Mr. DOAR. That's true.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Just one question. Is that the correct date, March 30,

1973, the carbon copy of a memo to Kehrli? It should be 1972, shouldn't it?

Mr. DOAR. Yes.

Mr. COHEN. Thank you.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. In response to Congressman Waldie, if you will look at 37.2 [38.2], printed page 267, the portion that we have bracketed, you will find Mr. Richardson explaining the reason for the claim of Presidential privilege with respect to those documents because they were documents in pending litigation, and he expresses his doubts as to the validity of that claim, but he thought he ought to urge it.

Mr. SARBANES. Where is it?

Mr. WALDIE. They came then from Presidential files to the Department of Justice and the President maintained that their Presidential paper classification persisted.

Mr. JENNER. I don't know that they came from the Presidential files to the Department but I do know that they reached the Department and they were part of that particular pending litigation in the possession of the Department.

Mr. RANGEL. Mr. Jenner, I would like to add the memo referred to in 37.2 [38.2], that you are talking about, is fully reproduced in 38.2 [39.2].

Mr. DOAR. Tab number 40 [41].

Mr. RAYBORN. Tab 40 [41], on August 15, 1973, the President addressed the Nation. The President reaffirmed his statement made on May 22, 1973, that he had no prior knowledge of the Watergate break-in and that he neither took part in nor knew about any of the subsequent coverup activities. The President also stated that he would continue to oppose efforts to destroy the principle of confidentiality of Presidential conversations and would not turn over the tapes of his conversations to the Special Prosecutor or to the Senate select committee. The President said that the time had come to turn Watergate over to the courts where the question of guilt or innocence belonged.

Mr. DOAR. Tab number 41 [42].

Mr. RAYBORN. Tab 41 [42], at an August 22, 1973, press conference, the President responded to an inquiry concerning his recollection of what he had told John Dean on March 21, 1973, and the subject of raising funds for the Watergate defendants. The President stated that Haldeman had testified as to that matter before the SSC and that Haldeman's statement was accurate.

Mr. DOAR. The President's statement is printed at 41.1 [42.1] and it sets forth at page 1022 within the bracket and continues on with respect to further discussion of the March 21 tape below the bracket.

I think that the President said in answer to a question at page 1022 "Mr. Haldeman has testified to that." The question was:

Could you tell us your recollection of what you told John Dean on March 21 on the subject of raising funds for the Watergate defendants?

Certainly. Mr. Haldeman has testified to that and his statement is accurate. Basically what Mr. Dean was concerned about on March 21 was not so much the raising of money for the defendants but the raising of money for the defendants for the purpose of keeping them still. In other words, so-called hush money. The one would be legal—in other words, raising a defense fund for any group, any

individual, as you know, is perfectly legal and it is done all the time. But, if you raise funds for the purpose of keeping an individual from talking, that is obstruction of justice.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Doar, it seems to me that there was a conversation on about April 16 with Henry Petersen involving the same subject where the President is responding to an allegation that Dean is involving or implicating many, and he makes a statement which is really contrary even to this statement, but which indicates that his own vulnerability would be on March 21, then he goes on to explain what he had really said on March 21, which really flies I think in the face of what the tape shows he actually said. I just mention that because it seems to me that when he is telling that to Henry Petersen he is telling a story which I think is not factual and maybe we should look into it.

Mr. DOAR. We have produced in a convenient form for the members of the committee all of the President's press statements, public statements, and we will be delivering those to the committee within a day or so, organized chronologically. We would hope then to also index those by subject matter so that the committee could compare the statements if they wished. Tab 42 [43].

Mr. RAYBORN. Tab 42 [43], on August 22, 1973, Special Counsel Wright told Judge Sirica that the President had told Wright that on one of the subpoenaed tapes there was national security materials so highly sensitive that the President did not feel free even to hint to Wright its nature.

Mr. DOAR. I don't know what Mr. Wright is talking about here. There is one editing of one of the tapes of a very, very short conversation between the President and John Dean involving one aspect of the wiretap program, but other than that the committee has heard all of the tapes dealing with any matters touching on national security. There has not been any editing on any of the tapes that were subpoenaed. Tab 43 [44].

Mr. RAYBORN. Tab 43 [44], on August 22, 1973, David Young testified before the grand jury that John Ehrlichman had given advance approval of a covert operation to examine Ellsberg's files in the office of Dr. Lewis Fielding. On August 23, 1973, Cox requested certain records relating to the Pentagon papers matter and the Fielding breakin. On October 4, Associate Special Prosecutor, William Merrill, talked to Buzhardt about the August 23 request and followed up his discussion with a letter to Buzhardt identifying eight documents that the Special Prosecutor needed immediately. Cox testified on October 29, 1973, that according to his records none of these documents had been turned over to the Special Prosecutor.

Mr. DOAR. Tab 43[44] indicates the pattern of the investigation by the Special Prosecutor and a pattern of investigation that seems fairly typical of criminal prosecutors, or Federal prosecutors. David Young, whose testimony you have had and have reviewed, testified for the first time on August 22, before the grand jury, and he gave information to the grand jury that Mr. Ehrlichman had given advance approval of the covert operation to examine Daniel Ellsberg's files. And the next day, the letter of August 23, you will see in the letter that one of Mr.

Cox's attorneys has written to Mr. Buzhardt covering many of the activities of David Young in the Plumbers unit between June 13, which was the date that the Pentagon Papers were released and the end of that year. And you see that at tab 1 they asked for records, logs, and other materials reflecting meetings, telephone conversations between those two dates and then tab 2 relates to records, logs, and materials of meetings between the President and any of the following individuals. And then tab 3 is relating to the Pentagon Papers, Daniel Ellsberg, Dr. Fielding, Howard Hunt, Gordon Liddy, that were authored or initiated by, addressed to, or received by any of the following. And then you have telephone records between a number of these individuals between August 11 and September 15. And then you have more records, you have records relating to Daniel Ellsberg that were removed from the files of Egil Krogh at the Department of Transportation and delivered to the White House by or on behalf of Egil Krogh or Sandra (Greene) Sheperd from the period December 31, 1972, to May 31, 1973, including all records relating to G. Gordon Liddy delivered to the safe in Egil Krogh's former office, and subsequent returns therefrom, from the custody or control of Leonard Garmet.

That is an example of the transfer of papers from the Department of Transportation to the White House and presumably to the Presidential papers category.

Mr. LATTI. Question, Mr. Chairman.

The CHAIRMAN. Mr. Latta.

Mr. LATTI. Mr. Doar. I was wondering whether or not we had any documentation to show that the Attorney General specifically assigned this break-in of Dr. Fielding's office to Mr. Cox?

The reason I raise the question is docket 5.1 where the duties and responsibilities of the Special Prosecutor are outlined, I see nothing that would remotely relate to this break-in with the exception of where it says, where he consents to have assigned to him by the Attorney General, and it might fall within that classification.

Now, do we have any documentation where he specifically assigned this responsibility to him?

Mr. DOAR. No.

Mr. LATTI. Or are we assuming this is a part of the Watergate thing?

Mr. DOAR. Well, I think that is a fair assumption.

Mr. LATTI. Well, I wonder in reading on page 144 at the bottom of the page, it says:

Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters of Watergate, all offenses arising out of the 1972 Presidential election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

Well, it seems to me that this is not a matter dealing with the Watergate. This was a matter dealing with national security.

Mr. DOAR. I do not agree with that, Congressman.

Mr. LATTI. Would you point out where you disagree?

Mr. DOAR. Yes; I think that two of the principals in the Watergate

break-in are also involved in the break-in of Dr. Fielding. That is Hunt and Liddy, and also some of the other people. Part of the Watergate investigation included the coverup. Anyone that was investigating the Watergate and the Watergate coverup would be under an obligation to inquire into the facts with respect to this matter, having in his possession the information that he had in August 1973.

Number two is that the charter of the Special Prosecutor provides that he is authorized to investigate allegations involving misconduct by Presidential appointees and here David Young before the grand jury has alleged that John Ehrlichman authorized the break-in, and so under that leg of his charter he would be authorized to investigate this.

Mr. LATTI. You mean there are other —

The CHAIRMAN. We will recess at this point. There is an amendment on the floor that has to do with this committee, and it is the antitrust amendment and I think the committee members would be interested. So, we will recess until this vote is over.

[Short recess.]

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman. Ladies and gentlemen, you may wish to make some notes of this material respecting the matter raised by Congressman Latta. In the confirmation hearings respecting Attorney General Richardson, then Secretary, this subject was directly raised as to the reach of Mr. Cox's jurisdiction, or whoever the new Special Prosecutor would be.

And I direct your attention and make note of page 101 of the nomination hearings of Secretary Richardson and on that page I will just read a part of it.

Senator Bayh puts the question "But, in your judgment the instructions of authority would give the Special Prosecutor the opportunity to pursue any violations that resulted from the so-called plumbing operations?"

Secretary Richardson replied:

Yes; definitely. As I said the other day, the common denominators that ought to apply in determining what he has jurisdiction over would be any involvement by White House personnel, present or former; any activity relating to the committee to Re-elect the President; any activity involving a major appointee, past or present, of this administration which in any way related to the conduct of the campaign.

Then at page 185, Senator Tunney is examining and puts this question:

Certainly investigation into the issue of obstruction of justice would be warranted, would it not, Mr. Secretary?

Mr. Richardson responds:

I would think that that certainly ought to be looked at. My only knowledge of this derives from the references that were made in the course of the Ellsberg trial. First to the break-in, then to the other information about Ellsberg that had been sought. It was by that route that an effort was made to find the files. To the best of my knowledge, Mr. Ruckelshaus certainly, upon finding that the files could have some bearing on the pending Ellsberg trial, exerted a great deal of effort to find them. My only communications with him on that subject, in effect, were in support of that effort.

In any event, I think it certainly ought to be looked to. I don't know that prima

facie the removal of files would be perceived to have any bearing at all on the *Ellsberg* case. There was, in fact, only one small portion of the transcripts or the tapes that involved Ellsberg.

Senator TUNNEY. But certainly, but this certainly would be a part of the general investigation that Professor Cox is to make, wouldn't it, Secretary Richardson?

Secretary RICHARDSON. Yes, it would. It is within the scope of his assigned responsibilities.

And then without reading, I direct your attention to correspondence at page 192 by Senator Cranston and Senator Goldwater, two letters, one to Senator Hruska and one to Senator Eastland dealing with this same subject matter.

The CHAIRMAN. Thank you. Mr. Doar.

Mr. DOAR. Tab 44 [45].

The CHAIRMAN. Please proceed.

Mr. RAYBORN. Tab 44 [45], on August 27, 1973, Cox requested all White House records relating to Joseph Kraft, and the electronic surveillance of Kraft.

Cox's letter to Buzhardt stated that his request was framed with the specificity necessary for a subpoena. Cox testified on November 5, 1973, that this request had not been filled.

Mr. DOAR. Tab 45 [46].

Mr. RAYBORN. Tab 45 [46], on August 29, 1973, Judge Sirica issued an order requiring the President to turn over the recording sought by the July 23, 1973, subpoena for in camera review by the court. On September 6, 1973, the White House filed a petition for a writ of mandamus in the U.S. Court of Appeals for the District of Columbia Circuit requesting that an order be entered directing Judge Sirica to vacate his order.

Mr. DOAR. Tab 46 [47].

Mr. RAYBORN. Tab 46 [47], in September 1973, the Special Prosecutor's office received the political matters memorandums file kept by Strachan that had been requested on July 10, 1973, and that the President had agreed to furnish to the Special Prosecutor in his letter to Judge Sirica of July 25, 1973.

Cox has testified that Buzhardt wanted to go through the file before turning it over and Cox agreed so long as he got to see the entire file.

Mr. DOAR. Members of the committee may remember that Strachan testified that there were 28 political matters memorandums written; 21 memoranda, political matters memorandums, were delivered to Mr. Cox. Strachan testified that he destroyed 2. Tab 47 [48].

Mr. RAYBORN. Tab 47 [48], on September 24, 1973, Cox told Richardson that an effort was being made to place White House documents out of his reach by removing materials or files thought to be the subject of a subpoena, and placing such materials or files among the Presidential papers. Prior to his appearance before the SSC on September 26, 1973, and the grand jury on September 27, 1973, Special Assistant to the President, Patrick Buchanan, has testified that the White House counsel instructed him to take his 1971 and 1972 files to the basement of the Executive Office Building. Buchanan has also testified that he always thought that such papers were Presidential papers.

Mr. DOAR. Mr. Buchanan's testimony is at 3905 at tab 47.3 [48.3] in which he testified almost down at the bottom of the page that:

I think that his papers and memorandums in his file that he always thought that they were part of the Presidential papers.

Mr. BUTLER. Who is the Presidential counsel who you are talking about?

Mr. DOAR. Well, at that time it would be John Dean.

Mr. SARBANES. It's at the top of 3906.

Mr. DOAR. No; it was Buzhardt and Mr. Garment and/or Mr. Parker.

Mr. BUTLER. Thank you.

Mr. DOAR. And the memorandum that Mr. Buchanan referred to as the memorandum dealing with political campaign strategy among other things. Tab 48 [49].

Mr. RAYBORN. Tab 48 [49], on Friday, September 28, 1973, the President decided to review the contents of the tapes which the grand jury and the Senate select committee had subpoenaed July 23, 1973, and directed General Haig to make the arrangements for such review commencing the following day at Camp David. The President asked his private secretary, Rose Mary Woods, to go to Camp David and to transcribe the contents of the subpoenaed tapes. Special Assistant to the President, Stephen Bull, was instructed to accompany Woods and to cue the tapes to particular conversations for her.

Mr. DOAR. Tab 48.3 [49.3] are John Bennett's notes. John Bennett is the Presidential aide in charge of tapes. And on the 28th of September he takes out the tapes that are listed on the second page of tab 48.3 [49.3] and these are the tapes that are transferred up to Camp David for recording.

Mr. RAYBORN. If you will look at the bottom entry on 48.3 [49.3] on the second page, page 32C, there appears to be two April 15 tapes. The testimony of Mr. Bull was that when he got to Camp David and searched the tape conversation on April 15 between the President and Mr. Dean he had one of the tapes which is reflected in the upper portion of the entry and he was not able to find the conversation. He called Mr. Bennett in Washington and asked Mr. Bennett to bring to Camp David another tape. Mr. Bennett brought another tape, which he thought might contain the April 15 conversation between the President and Mr. Dean, and that is reflected on page or on entry 32B and you will see the phone call at 6:15 on the right hand portion and that call indicates that at 6:15, September 29, Mr. Bennett opened and extracted one additional tape for April 15, 1973, and personally delivered it to Bull at Camp David at 8 p.m.

Mr. BUTLER. Now, what is the first April 15 tape he is referring to?

Mr. DOAR. You can see than up in I believe it is 4/11 or —

This is an entry of the EOB that is scratched through and it is the third line and it says 4/14 to 4/16, EOB. Ms. Holtzman has called to my attention the fact that there has been the tape for the 15th of April which has been identified at one place from 4/10 to 4/18 and in another place from 4/11 to 4/16.

And here is the third one from 4/14 to 4/16.

Mr. BUTLER. That is what I am having trouble finding. Where is that?

Mr. DOAR. Do you see —

Mr. BUTLER. What page?

Mr. DOAR. Pages 32C, which if you count the items down it is about the 10th item down. 4/14/73, 4/16/73.

Mr. JENNER. It is tab 48.4 [49.4].

Mr. SARBANES. Point 3.

Mr. JENNER. Or 48.3, [49.3] and the page is marked at the top 32B and 32C.

Mr. BUTLER. But, Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Are you telling us that the entry here of 4/14/73 to 4/16/73 concerns the tape of the 14th?

Mr. DOAR. It does.

Mr. BUTLER. Now, do we have anything other than this memorandum to tell us that?

Mr. DOAR. Well, we have some other memoranda that indicate that and other testimony that in the EOB office building there were two machines that operated alternatively on 6-hour cycles and that they ran for more than 1 day at a time.

Mr. BUTLER. Oh, yes. I think I understand that. But what I am saying is this indicates that he had, in your judgment, in his physical possession, the tapes, all of the tapes on the 14th on the 15th and on the 16th and then struck through the line.

Now, is that what we are told?

Mr. DOAR. Well, I am saying that he had a reel that covered the period 4/14 to 4/16 according to this memorandum.

Mr. KASTENMEIER. On that point, Mr. Chairman, if I may clarify this for counsel, I think it does not read 4/14/73. You are reading the slash as a part of the four. It is really 4/12/73.

Mr. SEIBERLING. It still covers the period.

Mr. JENNER. It still covers the 15th.

Mr. DOAR. But I think that is a different period. These boxes of tapes as I understand it, there was a cartridge and then it was in a box and on the outside of the box there was a date and they were filed in the safe chronologically. And on the outside it would be in the Oval office that there was a tape for each day so it would be the 16th, 17th, 18th and so forth. Over the EOB they would have a tape for more than 1 day and there are two tapes covering the same period over at the EOB.

And I just do not remember now whether that earlier tape was 4/12 or —

Ms. Holtzman. If I may answer that, Mr. Doar, it is 4/11 and 4/16/73 and there is one 4/10 to 4/20/73 and one at 48.2 [49.2] refers to another 4/12 to 4/16.

Mr. DOAR. I cannot explain that.

Mr. BUTLER. An additional question if I may. As I remember correctly now, because the April 15 apparently is becoming quite significant, there was taping done in the Oval room and that is the tape that ran out?

Mr. DOAR. No; the Executive Office Building.

Mr. BUTLER. That is the one that ran out?

Mr. DOAR. Yes, one of those two.

Mr. WIGGINS. Mr. Chairman, may I ask a question please?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I need some guidance, counsel, as to what this controversy at this point is about so that I can understand the concern about the dates and the part that has been crossed out.

Mr. DENNIS. Would the gentleman yield for a moment?

Mr. WIGGINS. Sure.

Mr. DENNIS. I would like to add that I have the same problem. I guess it is my fault because I did not get back from the floor as quickly as we started on this tab. But, I think there are several other members in the same situation and I really am a little bit of a loss.

Mr. DOAR. Well, before the recess Ms. Holtzman asked me what the explanation was in earlier tabs for the fact that there were cartridges for the period 4/11 to 4/16/73 in the EOB and then another entry or withdrawal of a tape from 4/10 to 4/20/73, and I indicated to Ms. Holtzman that since my understanding was that there were two recording systems in the EOB and they operated alternatively, that if you called for the conversations on a particular day you would get two cartridges, not one, because you could not tell which 6 hours they were operating on.

And here we were calling attention to the entry down at the bottom and the fact that there was some effort made to get a second tape of April 15 to Bull, and Mr. Rayborn had said that another tape had already gone up and we identified where that was.

But, this time it was marked 4/12 instead so that it was a different date and that could be a miscopy or it could have no significance at all.

Mr. WIGGINS. What do we make of all of this? I don't understand the concern.

Mr. DOAR. Well, I think that the records are not—I would say that the records with respect to the removal and control of the tapes as of that time were not very precisely kept.

Mr. WIGGINS. All right.

Mr. DENNIS. Is that all we are proving by this 32C page? What is the suggestion here?

The CHAIRMAN. I don't know that anyone is trying to prove it. It is just a fact.

Mr. DOAR. The question—

Mr. DENNIS. What is the significance?

Mr. DOAR. The question comes up in the next couple of paragraphs with respect to the 18½-minute gap, Congressman Dennis, and this was one of the tapes that was taken up to Camp David. And we are setting forth for the committee the chain of custody of those tapes and all of the tapes during this period when the gap was supposed to have occurred.

Mr. DENNIS. Well, are we talking about the 18½ minutes or are we talking about the tape which allegedly ran out on the 15th of April or are we talking about both of them?

Mr. DOAR. We are talking about both of them.

Mr. DENNIS. All right now, what is the significance of this exhibit here as to either or both of them? That is what I am getting at.

Mr. DOAR. Well, the significance of this exhibit is that the tape for June 20 was withdrawn and taken up to Camp David on the 28th of September. And the two tapes, the two tapes for the period covering the period April 15 were taken out and taken up to Camp David on this date, two cartridges.

Mr. DENNIS. OK.

The CHAIRMAN. Mr. Doar.

Mr. JENNER. Mr. Chairman and Mr. Dennis, also the fact that other tapes were taken up to Camp David on that day and secondly also raising with you for your determination whether the assurance of Mr. Buzhardt, which I called to your attention earlier, assuring the security with respect to the tapes, was being carried out.

Mr. DOAR. Tab number 49 [50].

Mr. RAYBORN. On September 29, 1973, Rose Mary Woods and Stephen Bull took between 8 and 12 tapes and three Sony tape recorders to Camp David. Haig has testified that on September 29, 1973, he telephoned Bull at Camp David and that Bull stated that he was having difficulty matching up conversations on the reel with the first item on the subpoena. Haig has testified that he would telephone Buzhardt who confirmed to Haig that only the conversation between the President and Ehrlichman was demanded by the subpoena of the June 20, 1973, EOB tape and that the subpoena did not include the conversation between the President and Haldeman.

Haig has testified that at approximately 10:10 a.m. he telephoned Rose Mary Woods and told her that the President's conversation with Haldeman was not included in the subpoena.

Woods types this information on a note to Bull.

Mr. DOAR. There is a conflict in the testimony behind this tab between Rose Mary Woods and Stephen Bull as to how many tapes were taken up to Camp David. And Stephen Bull believed he checked out 12 tapes.

Rose Mary Woods thinks that she received eight tapes. After the tapes got up to Camp David, Miss Woods began to transcribe the tapes, commencing with the tape on the morning of June 20, 1972.

Miss Woods testified that she was having difficulty or Haig was having difficulty, and he is the one that set the marker for her, matching up the conversation on the reel with the first item on the subpoena.

And if you look, though it is contained in Mr. Buzhardt and Mr. Haig's testimony in 49.1 [50.1] and 49.2 [50.2], if you look at 49.4 [50.4] you see a note:

Cox was a bit confused in his request re the meeting on June 20th. It says Ehrlichman-Haldeman meeting—what he wants is the segment on June 20 from 10:25 to 11:20 with John Ehrlichman alone.

Now, that meeting was the meeting that immediately preceded the meeting between Mr. Haldeman and the President during which there was an 18½-minute conversation about Watergate and which conversation was eliminated from or obliterated from the tape and the facts about which we will present to the committee, or information about which we will present to the committee tomorrow.

I understand from Mr. Rayborn that when Mr. Cox drew his subpoena he did not have all of the logs and of course he did not have the Presidential diaries so he just asked for the conversation between the President, Ehrlichman, and Haldeman between 10:25 and 12:50 and based upon this request, which I identified for you in the subpoena and the letter, Mr. Buzhardt and Mr. Haig decided that the only thing that Mr. Cox wanted was the conversation between the President and Mr. Ehrlichman which was from 10:10 to 11:25.

If you look at 49.5 [50.5] at page 842, Miss Woods there was asked:

Did you know Mr. Bull had gotten 13 tapes from General Bennett to bring to Camp David?

A. No, I do not.

Q. You don't know what happened to the other tapes?

A. No, I only saw 8.

Mr. DOAR. Tab No. 50 [51].

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. There is a typographical error in tab No. 49.1 [50.1] in the retyping from the indistinct original, page 1940, the fourth line, last paragraph, about the sixth word where it says "of R. N." In the original it says "for me."

And I would think that that probably should be "for me." "which is a normal procedure of R. N." and in the original it says "for me."

Mr. DOAR. Tab No. 50 [51].

The CHAIRMAN. Mr. Doar, before you go on to 50 [51] is there any way of reconciling whether or not those 13 tapes were really 13 that Miss Woods says were 8 or whether there were 8 in fact?

Mr. RAYBORN. Chairman Rodino, the testimony of Mr. Bull was that he received approximately 12 tapes and the testimony of Miss Woods was that she counted the tapes prior to leaving for Camp David on Saturday morning and there were 8. There is no reconciliation beyond that point, sir.

The record shows Mr. Bull was charged with 13 tapes. I am sorry, with 13 originally and he left 1 and he was charged then with 12.

The CHAIRMAN. And he actually had custody of those tapes, had he not?

Mr. RAYBORN. I am sorry, sir?

The CHAIRMAN. Had he not been the custodian up to that time of those tapes?

Mr. RAYBORN. At that time he was the White House person who received the tapes from General Bennett and he was the custodian of the tapes.

Mr. HUTCHINSON. Well, did he return 12 tapes?

Mr. RAYBORN. He returned five tapes on October 1 and that's the strike out line that you saw on 32C. The remainder of the tapes were returned at a later date, approximately November 13.

The CHAIRMAN. And how many of those were returned?

Mr. RAYBORN. All of them.

The CHAIRMAN. When you say all, what, 12?

Mr. RAYBORN. Five were returned on October 1 and then the remaining seven as I understand it were returned on November 13.

Mr. DOAR. Tab No. 50 [51].

Mr. RAYBORN. Tab 50 [51]. Woods has testified that during the week-end of September 29-30, 1973, she spent 29 hours transcribing the June 20 EOB tape but that she was unable to complete the tape. She has also testified that while she was transcribing the tape the President came into the cabin where she was working and listened to a portion of the tape for 5 to 10 minutes, that he pushed the buttons on her recorder back and forth, manipulating the tape and that he commented that he hears two or three voices. Bull has testified that he was unable

to find recordings of the President's June 20, 1972, telephone conversation with Mitchell or his April 15, 1973, meeting with Dean, and that he discussed this with the President and Woods while they were at Camp David.

Mr. LATTI. Question. Doesn't Mr. Bull give us an explanation on that as to why he was unable to find these recordings?

I am glancing a little bit forward and I find in his testimony that he indicates they weren't made in the first place.

Mr. DOAR. That's correct. He does testify.

Mr. LATTI. Don't you think that should show up then in the beginning of this tab 50 [51]? I don't find it.

Mr. DOAR. Yes, I think it should show up there.

Mr. HUTCHINSON. The tab ought to be corrected.

Mr. DOAR. 50.1 [51.1] is Rose Mary Woods testimony that she worked on the first portion of this tape, which was the conversation with the President and John Ehrlichman, all of the time that she was up at Camp David and she worked on it for 29 hours. Committee members will remember that Mr. Haig had told her that she was not to listen to the conversation between the President, Mr. Ehrlichman, and Mr. Haldeman because that conversation was not covered by the subpoena.

At pages 1234 to 1236 of 50.2 [51.2] at 1234, you have the testimony of Miss Woods about the portion of the tape that the President listened to. The question is asked at the bottom of the page of 1234:

Now the portion that the President listened to at Camp David you said involved three voices?

A. That is right, and as I mentioned I started with the Ehrlichman tape to type but the President moved the buttons back and forth to hear parts of the tape.

The day did not start with John Ehrlichman.

Q. Did he listen through earphones?

A. I think he held one earphone up. That is my recollection.

Q. You could hear what the President was listening to?

A. No; not when he held the earphone up to his ear.

Q. You did testify he heard a portion that involved three voices?

A. Yes; he said he did.

Q. He told you that?

A. He said I don't see how you are getting anything of this, it is so bad.

Q. That does not mention anything about three voices, Miss Woods.

A. I said yes, he mentioned hearing two voices or three voices and he didn't see how I was getting any of it.

Q. Did he say two or did he say three?

A. My recollection is three.

Q. And you could not hear what he was listening to?

A. No; and I don't think you could if you had been in the room either.

Q. Did he identify who the speakers were?

A. No; there was no need for him to identify to me who was on the tape, it was not anything I had to do.

Q. How long had the President listened to the tape?

A. Just a few minutes, just to really, I think, understand how difficult the job was.

Q. How long did he remain at your cabin at Camp David that particular day?

A. I would say maybe 5 minutes.

Q. Are you sure that is the full amount of time that he spent there?

A. No; I am not sure. I would say about.

Then she was asked further on:

Did he listen to the June 20th tape at any time other than on the 29th of September at Camp David?

She said no.

She said:

He listened to very small parts of it and maybe not even the Ehrlichman-Haldeman testimony, just the beginning to actually as I mentioned before sympathize with the terrible job I had.

Then the next question:

On the first of October when you reported to him what was missing did he indicate to you he had already heard that portion?

A. No; he did not.

On September 29, the daily diary of the President, at 50.4 [51.4] at page 3, you see that there is a note that the President met with Miss Woods for 5 minutes at 7:30 to 7:35.

Then earlier, there is the note that the President met, at the bottom of the page before, from 6:19 to 6:50—from 6:19 to 6:50, the President met with Miss Woods.

We are now ready to go to book III, Mr. Chairman.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. This last tab is somewhat cryptic. Could you give us some idea of what possible interpretations could be given to this material?

I do not fully understand what is meant by the coming back to the grand jury testimony, both in the morning and in the afternoon, about the conversation of Miss Woods with the President?

Mr. DOAR. Well, the purpose of the tab is to trace the chain of custody of the June 20 tape and Miss Woods' testified on two different times, with respect to what she did in transcribing that tape and describes fully what part of the tape she worked on. The purpose is to give the entire picture to the committee.

On November 8, the first time that Miss Woods testified, the 18½-minute gap had not been disclosed, and on November 24, the 18½-minute gap had been disclosed.

The CHAIRMAN. When was that date, Mr. Doar?

Mr. DOAR. November 28—

Mr. RAYBORN. The gap was disclosed in chambers to Judge Sirica on November 20 or November 21. Miss Woods first testified in the tape proceedings on November 8. She was recalled as a witness on November 26.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, just a point of clarification.

When the experts reported to Judge Sirica recently with respect to the 18½-minute gap, did they identify the machine on which the erasures were made?

Mr. RAYBORN. They said probably it was the Uher 5000, which was the tape used on October 1 by Miss Woods.

Ms. HOLTZMAN. Is that one of the machines that was here at Camp David that has been referred to in tab No. 50 [51].

Mr. RAYBORN. No; it was not.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. In my book, there may be an error—maybe it is in other books. Following tab No. 50.5 [51.5], there are pages of a transcript from a District Court matter and the second page thereof purports to be the testimony of Stephen Bull, pages 434 and following, but the pages behind that, at least in my volume, are pages 356 and following, and then later, page 465 and following.

It does not seem to be—I either have the wrong index or the wrong substance, one or the other.

Mr. DOAR. We will have to check that.

Mr. DANIELSON. That is behind tab No. 50.5 [51.5].

Mr. DOAR. Tab No. 51 [52].

Mr. SEIBERLING. Mr. Chairman, on tab 50.4 [51.4], do we have any explanation as to the fact that there were two meetings within a very short time of each other between the President and Miss Woods? We have no explanation of the two and no mention of it in their testimony. Do we have any other evidence? Because one of them was for 41 minutes.

Mr. RAYBORN. The only evidence we have is Miss Woods' testimony and the daily diary entries.

Mr. McCLORY. Mr. Chairman, could I ask this question?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. At tab 43.4 [44.4] is reference to the grand jury testimony of David Young which we did not receive. Did we receive that previously.

Mr. JENNER. Receive the testimony?

Mr. McCLORY. Of David Young.

Mr. DOAR. We have it here. We did not circulate it today because you had seen it once before.

Mr. McCLORY. That is what I wanted to know.

Mr. LATTI. What date is this gap that we are speaking of, with the erasure on April 15?

Mr. DOAR. No; June 20. Tab No. 51 [52].

Mr. RAYBORN. Tab 51 [52], on October 1, 1973. Woods continued work on the transcription of the June 20, 1972. EOB tape at her office in the White House.

During the day, she began to transcribe from a Uher 5000 recorder that had been purchased that day by the Secret Service for her use. Woods testified on November 8, 1973, that she took every possible precaution not to erase any part of the tape. After the existence of the gap in the tape was disclosed on or about November 21, 1973. Woods testified on November 26, 1973, that part of the recording erased while she was talking on the telephone and that shortly after she had discovered the gap on October 1, 1973, she had reported to the President that a gap of approximately 5½ minutes existed on the tape and that she had made a terrible mistake.

Woods also testified that the President had told her the gap was no problem because he had been informed by his counsel that the June 20 Haldeman conversation had not been subpoenaed.

Mr. DOAR. This again, Father Drinan, at 51.1 [52.1] is the testimony of Rose Mary Woods on November 8. There she testified, Miss Woods testifies to the care with which she, that she took in transcribing the tape and the number of hours she worked up at Camp David in doing

it; also that she was transcribing the President's conversation with John Ehrlichman.

Then the next testimony on November 26, she testifies that she got a telephone call while she was recording the tape and that part of the recording may have been erased while she was talking on the phone, with her foot, because of the way she pushed her footpedal.

In the morning, we are going to have here the machines to demonstrate to you along with the report of the experts to go over this with you to explain and have you see visually just exactly how this particular machine operated. It will not take very long, but we will not have them assembled and ready until the morning. Tab 52 [53].

Mr. RAYBORN. Tab 52 [53], on October 4, 1973, Bull and Woods accompanied the President to Key Biscayne. They took with them several tapes, including the June 20 EOB tape, and the Uher 5000 tape recorder. The tapes and the recorder were kept in a safe in the villa occupied by Woods. The Secret Service maintained a log showing who opened and closed the safe that contained the tapes, the tape recorder, and other envelopes. According to that log, access to the safe was limited to Bull and Woods, who opened and closed the safe on several occasions during the 3-day period the tapes were in it. Woods has testified that the June 20 tape was neither removed from the safe in Key Biscayne nor played during the October 4 weekend.

Mr. DOAR. If you will look at 52.4 [53.4], you will see that is the safe access log of 10/4/73, and there was some testimony that the safe had been opened just before 2 o'clock in the morning and then closed and then opened 2 minutes later and closed again 6 minutes later.

Bull testified that he took an envelope out of the safe at that time and closed the safe thereafter. Tab No. 53 [54].

Mr. SEIBERLING. Mr. Chairman.

Mr. Doar, do we have any explanation by Bull as to why the odd hours?

Mr. DOAR. Just that he testified that at some time around midnight, he took an envelope from the safe to the President's villa. That is all.

Mr. SARBANES. He went to the safe twice.

Mr. SEIBERLING. Twice. It was not around midnight, it was at 2 o'clock in the morning.

Mr. DOAR. We do not have any explanation for that.

The CHAIRMAN. Mr. Doar, you keep referring to the subpoena. Do you have a tab that indicates a subpoena with reference to these tapes?

Mr. DOAR. Yes; we do. It is in one of the subpoenas at book II. You mean the description of the tapes that were subpoenaed?

The CHAIRMAN. Yes; well, it is all right. I think it would probably be helpful if it were included somewhere in this area, because you keep referring to it.

Mr. DOAR. I cannot recall exactly.

The CHAIRMAN. That is all right.

Mr. DOAR. If you mark it at 32, tab 32 [33] is the subpoena describing the tapes requested.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Doar, as I understand it, then, we have no ex-

planation from Mr. Bull as to why he went to the safe in this case at two different times, except for the fact that at one time, he supposedly picked up an envelope to give to the President? Is that all that we have concerning that particular time sequence?

Mr. DOAR. That is all. He was asked and he said he was, his memory was refreshed with respect to this log and he said:

Your Honor, I don't recall specifically what I was doing. I can guess.

That is at 2571, in 52.2 [53.2].

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Can you explain why instructions were not given to the Secret Service to maintain an inventory with respect to what was taken out with respect to the tapes at Key Biscayne?

Mr. DOAR. No; I cannot.

Ms. HOLTZMAN. Was Mr. Buzhardt in charge of instructing them with regard to the custody of these tapes?

Mr. DOAR. Mr. Buzhardt generally had authority with respect to the tapes.

Mr. BUTLER. As a matter of fact, General "Kenneth" was along on this trip, too, was he not? What was he doing down there?

Mr. DOAR. I do not know. I see "Bennett" name on that log. It says safe opened. I thought the name was "Bennett."

Mr. RAYBORN. Which tab is that, sir?

Mr. BUTLER. The one we just looked at, 52.4 [53.4] second page.

Well, that is quite all right. I just do not know who all those people are—

Mr. RAYBORN. The other people listed on this access log, sir, were Secret Service logs. The only other persons who had access that were shown on these logs is the technician—"safe opened at 8:08 by Dan Merryman"—in the presence of R. Woods and J. Kennedy, WHCA.

The CHAIRMAN. We will recess until we have completed our voting on this. I think this is final passage. Then we will come back until we get through tab 60.

[Recess.]

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, do I understand that the tapes were placed in envelopes and then put in the safe in Miss Woods' villa?

Mr. DOAR. No; to my knowledge, there is no testimony that the tapes were placed in envelopes.

Mr. WALDIE. Well, let me call your attention to tab 52.1 [53.1], page 2363. This is Steve Bull's testimony.

Q. And the Secret Service Agent stayed there around the clock.

A. They stayed in a separate room where the safe was—and the safe was always locked.

Tab 52.2 [53.2], page 2570. The middle of the page, where it says "The Witness." The question was "Do you know what was kept in the safe that you had access to besides maybe the tapes?"

"The WITNESS. Yes, sir, what I believe we kept in there was the tapes that were in individual envelopes."

Then the question obviously becomes what was delivered to the President's villa at 2 o'clock in the morning from that safe.

Mr. DOAR. If I understand the testimony correctly, five tapes were taken to Key Biscayne. Of the 13 or so tapes that had gone out of the

safe on the 28th of September, all but five had been returned. One of those was the June 20 tape that had been, that Miss Woods had finished transcribing. So that I do not know what was in the other envelopes.

Mr. WALDIE. You do not what?

Mr. DOAR. I do not know what was in the other envelopes.

Mr. WADDIE. I know you do not, but from the testimony, tapes were in the envelopes, is that right?

Mr. DOAR. The testimony is that seven tapes were kept.

Mr. WALDIE. What?

Mr. DOAR. Seven tapes were kept and taken to Key Biscayne.

Mr. WALDIE. I know, but they were kept in an envelope in the safe, and it was my understanding that that delivery to the President's villa was of an envelope from the safe.

Mr. DOAR. That is correct.

Mr. WALDIE. Was this any evidence that that was not then a tape from the safe?

Mr. RAYBORN. Congressman, Mr. Bull has testified about delivering that envelope. He was asked if it contained a tape. He stated that he did not believe that a tape was in the envelope.

Mr. WALDIE. Where is that testimony?

Mr. RAYBORN. That is in Mr. Bull's testimony on January 16. I will obtain it and bring it to you tomorrow, sir.

Mr. WALDIE. It is not in our book?

Mr. RAYBORN. It is not.

Mr. OWENS. Would you make that available to us?

Mr. WALDIE. I thought the testimony was that he did not even recall having delivered anything to the villa until it would show on the log, the safe, and then said, well, he must have delivered something.

Mr. RAYBORN. I do not believe he mentioned the delivery. When shown the logs, he recalled it.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Counsel, did you say that this testimony you are going to provide tomorrow, he said that he did not think a tape was in the envelope? Is that what you said?

Mr. RAYBORN. That is correct.

Mr. DENNIS. Well, I think that is pretty important, in view of Mr. Waldie's question, so I hope you will provide us that.

Mr. SEIBERLING. Question.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. On that same point, I have no idea what kind of envelope we are talking about or what kind of tapes we have, so if the testimony is going to be that he did not know what was in the envelope, and I cannot conceive of having an envelope with a tape and not knowing what it is, could you get some information as to the size of the tape and perhaps the envelopes so that we would have a better understanding as to what was delivered to the President?

Mr. RAYBORN. I am not sure we can do that. We can get the information which indicates that the reels containing the tapes were the normal reels that contained 6 hours, 1,800 feet of tape.

Mr. RANGEL. Are reels normally in a box such that you would purchase from a commercial store?

Mr. RAYBORN. Largely so, I would believe, sir.

Mr. RANGEL. So would it not also be important to determine the size of the envelopes that were taken out of the safe and delivered?

Mr. RAYBORN. I would think so. I do not recall Mr. Bull's testimony.

Mr. RANGEL. That is the whole line of questions from Congressman Waldie and regardless of what this person said he delivered, it just seems to me that a tape would be something that you would know either that you delivered it or you did not.

Mr. RAYBORN. I will have that testimony tomorrow, sir, and bring it over.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. You are going to give each of us Mr. Bull's testimony?

Mr. RAYBORN. We can make that available.

Mr. SEIBERLING. So we will each have a little more information.

Mr. RAYBORN. We can make that available.

The CHAIRMAN. Please proceed.

Mr. WALDIE. Mr. Chairman, if I may, just before we conclude, the testimony—

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. The testimony we do have from Mr. Bull says on that very specific point on page 2571, where they asked him about that peculiar hour and what he took out, he says:

Your Honor, I don't recall specifically what I was doing. I can only guess.

Mr. RAYBORN. I am sorry, sir.

Mr. WALDIE. I am saying that the evidence and the testimony of Mr. Bull on page 2571 of tab 52.3 [53.3] says he does not recall specifically what he was trying to get out of the safe, he can only guess.

Mr. RAYBORN. That is correct, sir.

Mr. WALDIE. Is that the substance of the testimony you will provide us tomorrow?

Mr. RAYBORN. That will be the substance of it, yes sir.

Mr. DENNIS. Counsel, you will provide it to us and let us decide by looking at it, is that correct?

It breaks off here, for instance, at the end. There is an unanswered question at the bottom of the page. I think we should have this whole testimony. Thank you.

Mr. DOAR. Tab No. 53 [54].

Before we get to 53 [54], Mr. Chairman, in the morning, we will go back over 51 [52] with respect to the—Miss Woods' testimony with respect to the 5½-minute erasure and hear testimony with the machine here, so that we can go back, return to that particular tab.

The CHAIRMAN. Fine.

Mr. DOAR. Tab No. 53 [54].

Mr. RAYBORN. Richardson has stated that in late September or early October 1973, he met with the President regarding the Agnew matter. Richardson has stated that the President said that now that they had disposed of that matter, they could go ahead and get rid of Cox.

Mr. DOAR. Mr. Richardson's affidavit to that effect is the same affidavit we referred to earlier, paragraph 5 at page 3 of 53.1 [54.1] says that: "In late September or early October 1973 I"—meaning the

Attorney General—"met with the President in regard to the Agnew matter. After we had finished our discussion about Mr. Agnew, and as we were walking toward the door, the President said in substance, 'Now that we have disposed of that matter, we can go ahead and get rid of Cox.' There was nothing more said." Tab 54 [55].

Mr. RAYBORN. Tab 54 [55], on October 11, 1973, Special Prosecutor Cox filed an indictment against Egil Krogh charging him with making false declarations before the District of Columbia grand jury. The indictment charged that Krogh had given false answers when questioned about his knowledge of E. Howard Hunt's and Gordon Liddy's travels to California for the White House.

Mr. DOAR. Tab 55 [56].

Mr. RAYBORN. Tab 55 [56], on October 12, 1973, the U.S. Court of Appeals for the District of Columbia Circuit ordered the President to turn over the recordings subpoenaed by the grand jury to Judge Sirica for an in camera inspection or to submit a statement setting forth any claim that certain material should not be disclosed because the subject matter related to national defense or foreign relations or was otherwise privileged. The court stayed its order for 5 days to afford the President an opportunity to seek Supreme Court review.

Mr. DOAR. Tab No. 56 [57].

Mr. RAYBORN. Tab 56 [57], on October 15, 1973, Richardson met with Haig and other Presidential aides to discuss the tapes litigation between the Special Prosecutor and the White House. There was discussion of a proposal to produce a version of the tapes and then fire Cox. Richardson has testified that he said he would resign if such a proposal were carried out and according to Haig, the proposal was dropped on that day.

There was then discussion of the President's proposal to ask Senator John Stennis to listen to the tapes and verify the competence and accuracy of a record of all pertinent portions. Richardson agreed to seek to persuade Cox that the Stennis proposal was a reasonable way of dealing with the subpoenaed tapes.

On the afternoon of the 15th, Richardson met with Cox and outlined to him the Stennis proposal. Richardson also suggested to Cox that the question of other tapes and documents not covered by the subpoena of July 23, 1973, be deferred.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. On page 1279, tab 56.2 [57.2], you have the statement of General Haig where he points out that the proposal to, the proposal was rejected on a Monday morning. It was unacceptable to a number of people in the discussion.

Have you ever tried to determine who it was unacceptable to? As I understand it, there is a considerable controversy which still continues with respect to Mr. Haig and Mr. Richardson as to whether or not he approved of the Stennis plan with the addition that Cox would seek no more information. I was wondering what he was referring to in that statement, that it was unacceptable to whom?

Mr. JENNER. When we interviewed Attorney General Richardson, Mr. Doar and I, he stated that the addition to which you have referred, was that he would not ask for any more tapes if the Stennis

proposal was accepted, but that was a surprise to Secretary Richardson and that he did not agree with that; that is, he shared Mr. Cox's view on that subject.

Mr. DOAR. I took it that General Haig was also saying that the proposal was not acceptable to the Attorney General on Monday morning.

Mr. COHEN. In that news conference? Meaning Elliot Richardson?

Mr. DOAR. Elliot Richardson said there was a discussion on Monday, which was the 15th, that they would produce a version of the tapes and that they would fire Mr. Cox.

Mr. Richardson said that he said he would resign if such a proposal was carried out and at that time, the proposal was dropped—that proposal. Mr. Richardson also related that to us and that is in his testimony behind the tab.

Mr. COHEN. Thank you.

Mr. DOAR. Tab No. 57 [58].

Mr. RAYBORN. Tab No. 57 [58], on October 17, 1973, Richardson submitted to Cox a written proposal for compromise that provided that the subpoenaed tapes would be made available to a third party verifier selected by the President. The verifier would be given a transcript that omitted continuous portions of substantial duration which clearly and in their entirety were not pertinent and would then prepare a verified transcript.

The Special Prosecutor and counsel for the President would join in urging the court to accept the verified record as a full and accurate record of all pertinent portions of the tapes.

Richardson has stated that prior to submitting this document to Cox, he showed a draft to Buzhardt, and that at the urging of Buzhardt, he deleted a paragraph of the proposal that stated it related only to the tapes covered by the subpoena. Richardson has stated that Buzhardt pointed out that the paragraph was redundant because the proposal on its face dealt only with the subpoenaed tapes.

Mr. DOAR. The gist of this paragraph is that Mr. Richardson, in talking to Mr. Cox about a compromise, was talking only about the subpoenaed tapes and the question of future tapes or additional requests for tapes or pursuing in court Mr. Cox's claim that he was entitled to additional tapes, would not be foreclosed by any compromise. And when Mr. Richardson showed the draft of the proposal to Mr. Buzhardt, Mr. Buzhardt suggested that he delete the paragraph which stated, or the heading of the paragraph, which stated that it related only to the tapes covered by the subpoena on the grounds that that was redundant, because all they were talking about in connection with this compromise were the tapes covered by the court of appeals' order. As you come to events later in the week, the positions change and the compromise is not just that the agreement be that there will be this kind of a procedure for getting a transcript of the tapes that were covered by the court of appeals' order, but that Mr. Cox would not go to court to challenge the President's claim of executive privilege about any additional tapes. Tab No. 58 [59].

Mr. RAYBORN. Tab 58 [59], on October 18, 1973, Cox submitted to Richardson his comments on Richardson's proposed compromise, noting certain objections on particular points. Cox stated that the

essential idea of providing for impartial but nonjudicial means for providing the Special Prosecutor with an accurate version of the content of the tapes without his participation was not unacceptable.

Richardson met with Haig and Wright at the White House and discussed Cox's comments.

On the evening of October 18, Wright told Cox that four of his comments departed so far from Richardson's proposal that the White House could not accede to them in any form and that if Cox did not agree, the White House would follow the course it deemed in the best interest of the country.

Mr. DOAR. During the day of October 18, Mr. Richardson and Mr. Cox had a meeting and talked, and also Mr. Cox submitted to Mr. Richardson his comments in writing on the proposed compromise. And again, there was no discussion with respect to going into court and seeking by subpoena or otherwise the production of further tapes or documents. Mr. Cox then went out to dinner to his sister and brother-in-law's house, or some other member of his family, and Mr. Charles Wright, who was special counsel to the President, called him and said that night that four of Mr. Cox's comments departed so far from the Richardson proposal that they would not be acceptable.

Mr. Cox's testimony is that he did not want to discuss it over the phone, thought it was a matter that was still possible, that there was still room for negotiation, and he suggested that he consider the matter and set down his views in writing the next day. Tab No. 59 [60].

Mr. RAYBORN. Tab 59 [60], on the night of October 18, 1973, Richardson prepared a summary of reasons why he thought he must resign. Richardson wrote that Cox had rejected a proposal which Richardson considered reasonable, but since he appointed Cox on the understanding that he would fire him only for "extraordinary improprieties," and since he could not find Cox guilty of any such improprieties, Richardson could not stay if Cox went.

Mr. DOAR. Mr. Richardson's statement with respect to the reasons why he must resign, he was not operating on the theory that the White House was presenting a proposal to Mr. Cox which provided that he would be foreclosed in the future from asserting a claim for documents or tapes of conversations which the President felt were privileged, that that matter would be left to the courts, but that as events turn out the next day, that was the proposition that the White House had presented through Mr. Wright to Mr. Cox.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Did the Court of Appeals' order become final on October 18? It said he gave the President 5 days to appeal and that decision was issued on the 12th of October.

Mr. DOAR. Well, it would be final on the 19th—the 13th through the 19th.

Ms. HOLTZMAN. Thank you.

Mr. DOAR. The next paragraphs, Mr. Chairman, we ought to take together, so this would be a good place to break.

The CHAIRMAN. We will recess until 9:30 tomorrow morning.

[Whereupon, at 6:35 p.m., the committee recessed to reconvene at 9:30 a.m., Wednesday, June 19, 1974.]

IMPEACHMENT INQUIRY

Executive Session

WEDNESDAY, JUNE 19, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:45 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead Maraziti and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garison III, deputy minority counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; James B. F. Oliphant, counsel; George Rayborn, counsel; Hillary D. Rodham, counsel; Gary W. Sutton, counsel; William A. White, counsel; Robert McGraw, investigator; Jonathan Flint, research assistant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. Mr. Doar, might I inquire, have we had any word from the Justice Department regarding the matter which we discussed yesterday, the request of the Foreign Relations Committee?

Mr. DOAR. I have not been able to reach Mr. Silberman yet.

The CHAIRMAN. Will you see that we contact them so that we can give them a reply?

Mr. DOAR. I will do that.

The CHAIRMAN. OK.

Mr. DOAR. We were finished at paragraph 59, members of the committee, yesterday, and before going on with paragraph 60, there are several matters I wish to call to the committee's attention.

First, the committee yesterday asked us to distribute to the members some additional material, and that is one of the envelopes that was distributed this morning. First was a letter from President Truman to Chairman Zelde dated November 12, 1953, and the other Stephen Bull's testimony on January 18, 1974. And the members of the committee have that material at their desks.

The CHAIRMAN. Where do you insert the material, Mr. Doar?

Mr. DOAR. The Truman letter at tab 20.1 [21.1]¹ and the Bull material would be at tab 52 [53]. And it also——

Mr. SEIBERLING. Tab 50.2 [51.2]?

Mr. DOAR. Well, let me just look to see.

Mr. RANGEL. Tab 50.6 [51.6].

Mr. DOAR. Well, it is included in a number of tabs on 50 [51], tabs 51 [52] and 52 [53]. But, I think the most pertinent place for it to be located and the most convenient for the members would be at 52.2 [53.2].

There were several questions that were asked yesterday about the custody of the tapes and the investigation in connection with who caused the 18½-minute erasure. The members of the committee should know that this matter has been under investigation by the Special Prosecutor's office and by the grand jury for some time. And based on the best information I have, and obviously the Special Prosecutor is not free to make available to me the minutes of the grand jury proceedings, they have not completed their investigation, which translated, means that they have not yet determined who or whom was or were responsible for it, of actually erased or caused the erasures on the tape.

And I do not think it is possible for your staff to conduct this kind of an investigation within the time limits we have, with any pre-assurance of being able to make that determination, and we have presented this material not for the purpose of leading up to the fact that we were going to be able to disclose to the committee and show to this committee who caused these erasures, but we presented it rather to show that the erasures had been caused by, in the opinion of the experts, by manual manipulation of the hand controls on a recording device, and to show to the committee the chain of custody of those materials, of those tapes at or about the time that this 18½-minute gap was first discovered by the people at the White House according to their testimony.

And I would not want the committee to be under the impression that it will, prior to the time that it considers this matter, that it will have an answer to the question of who did it with respect to the 18½ minutes in any sense that you would have it if you were going to bring criminal charges against a particular person for obstruction of justice by reason of destruction of evidence.

Mr. RANGEL. Mr. Chairman, I do not think this committee wants to know who did it. Certainly I don't think we have jurisdiction over that matter. Have we been able to firmly establish that it is not a question of the chain of custody as I see it, and you are talking about the chain of possession, but have we been able to establish that the President had personal custody over the recordings?

Mr. DOAR. Yes we have.

Mr. RANGEL. Then I don't see where there is any more to do with this, and we have also been able to establish that while this was in his legal custody that it was deliberately erased.

¹ The paragraphs of book IV were renumbered prior to publication. The numbers in brackets refer to the paragraph numbers in the printed volume.

Mr. DOAR. Well, we will present that proof to you this morning. I only made the point that was our view of what we were presenting, but some of the questions yesterday gave rise to perhaps we were going to go forward, and I may have inadvertently in answer to one question caused or led someone to believe that in some way we were going to be able to solve this in a sense that I have enunciated to you. And I just wanted to make that clear.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. You are not saying, are you, that it was deliberately erased in contrast to being accidentally or inadvertently erased?

Mr. DOAR. I am not putting a deliberate or accidental on it. I am saying that it was erased.

Mr. McCLORY. Manually?

Mr. DOAR. Manually done; yes.

Mr. McCLORY. And you are identifying the person who presumably had custody of the tapes, but you are not saying it was deliberately, purposefully done?

Mr. DOAR. When you use presumably, that does not prove who did it.

Mr. McCLORY. Right.

Mr. DOAR. But we are showing, have showed you that this erasure occurred. We are telling you, we can tell you what use was being made of the tapes at that time, the amount of activity and the interest and the concern by the President and his key associates with respects to the tapes at that time, and that this evidence was obliterated.

Mr. McCLORY. Yes. But you are not saying it was deliberately, purposefully, or intentionally erased, are you?

Mr. DOAR. No.

The CHAIRMAN. Mr. Doar, is the report of the panel that was set up to inquire into this made a part of our record?

Mr. DOAR. It will be this morning.

The CHAIRMAN. OK.

Mr. JENNER. Mr. Chairman, it has been the consistent policy of the staff that we are not using the word deliberately or otherwise. That is a decision for the committee to reach. All we are doing is presenting what known facts there are, and the report of the experts from which you will reach your own conclusion.

Mr. RAILSBACK. Mr. Chairman, may I just ask a question?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I wonder if our counsel, or how our counsel feels about the allegation that was raised I think by the President among others, that there seemed to be a dispute or a misunderstanding as to what conversations were actually subject to the request that day, whether it was just Haldeman's or whether, I mean, it was just Ehrlichman's, or whether Haldeman's conversation was meant to be included? Was there a legitimate, in your opinion, a legitimate dispute about that, because that is one of the justifications given.

The President said to Rose Mary Woods that she need not be concerned because it was his understanding that that was not requested.

Mr. JENNER. Well, Mr. Railsback, there was a subpoena issued which we presented to you yesterday, or a letter, that was Mr. Cox's letter, and I think paragraph 2, as I recall, which said or requested a conver-

sation of the President with three people, and as we presented yesterday, Mr. Buzhardt, in looking at that, interpreted that to mean that Mr. Cox was confining his subpoena to a conversation between the President and I think two other people and three other people.

Therefore, he reached the conclusion in interpreting the latter that Mr. Cox was not asking for a conversation solely between the President and Haldeman alone, and there was not any dispute about—you used the word dispute—that was an interpretation by Mr. Buzhardt which was conveyed to the President, and the remark of the President to which you make reference must be construed in the light of what Mr. Buzhardt's interpretation of Mr. Cox's letter request was.

Mr. RAILSBACK. I see. Thank you.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. On that point, do the briefs submitted on behalf of the President, or the oral argument submitted on behalf of the President, either in the district court or the court of appeals, in any way indicate that the President was making or his counsel were making a distinction between the conversations between the President and Mr. Ehrlichman and the conversations between the President and Mr. Haldeman on June 20, or do they not?

Mr. JENNER. I looked at those several weeks ago, and I will give you my present recollection, and the answer is in the negative.

Ms. HOLTZMAN. I think that is very illuminating in terms of what was understood by the counsel. Thank you.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, either counsel, can you refer me to any other place where the testimony has been given as to the content of the tape which was obliterated?

Mr. DOAR. Yes. I cannot give it to you, but Mr. Haldeman had notes of the meeting, and the notes are included in the notebooks, and so that notes of that 18½ minutes were preserved. And they, as I recall it, they said he dealt with getting out of a PR counteroffensive about Watergate.

Mr. WIGGINS. Is that indexed in the context of this discussion of the obliteration of the tape?

The CHAIRMAN. I recall we had that in the presentation.

Mr. DOAR. It is in another book, and it is not cross-indexed, but we will get it for you before the noon hour is over.

Mr. WIGGINS. Well, I would like it.

Mr. DOAR. And I think, Congressman Railsback, it would help to put this matter in context if you understand, if I could explain the situation when Mr. Cox first made his request for this conversation. He had been given at that time just Mr. Haldeman's log which was for June 20, and Mr. Haldeman's log indicated that from 10:30 to 12:45, he was with the President, but does not indicate that he was with Mr. Ehrlichman. But Mr. Cox asked for the material between 10:30 and 12:45, or the conversation between the President, Mr. Ehrlichman, and Mr. Haldeman.

Now, the fact was that from 10:25 to 11:20, and this was in the President's diary that was furnished many months later, the President met with Mr. Ehrlichman alone, and then 6 minutes later, there was a 6-minute gap between the meeting with Mr. Ehrlichman and

Mr. Haldeman and the President, and the President met with Mr. Haldeman from 11:26 to 12:45. Now, the testimony with respect to when the 18½-minute gap occurred is that there was about 3 or 3½ minutes of conversation between Mr. Haldeman and the President at the beginning of the conversation before the conversation turned to Watergate, and before you have the 18½-minute gap, so that you can say that that gap occurred between 11:30 about and 11:50, according to the President's log, or early in the conversation.

Now, the other thing that I think the committee members should know in connection therewith is that when Judge Sirica was presented the material he was presented, he subpoenaed, and there was turned over to him, the Ehrlichman conversation between 10:25 and 11:20, and he listened to that conversation, and he found after listening to the conversation that none of it had any relevance to Watergate. I mention that because he did not say that he was unable to hear the conversation, and when we come a little later here you will see what Judge Sirica said about the conversation. And there was no indication that he was not able to hear that conversation between the President and Mr. Ehrlichman.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you. It may be helpful to Congressman Railsback and other members of the committee that I call attention to the following: a subpoena was ultimately issued and other hearings before Judge Sirica dealing with the interpretation of the clause of the subpoena which was in the terms of the provision in the letter to which we directed your attention yesterday, the following occurred: in the examination by Mr. Ben-Veniste of the Special Prosecutor's staff—

Mr. BUTLER. Are you reading from something we have?

Mr. JENNER. I am reading from something that you do not have, and it had not occurred to us that this would arise, and we will make it available to you. It might, at this particular moment, Mr. Chairman, because you are all concentrating on it, be well to have this bit of testimony before you.

"Mr. Buzhardt advised him," General Haig, "in substance all that was called for in the subpoena was for the conversation between the President and Mr. Ehrlichman on June 20?"

Answer: Yes.

Question: Did you consult with anyone prior to giving this opinion to General Haig?

Answer: No.

Question: And you had discussed the matter previously, I take it, with Professor Wright to some extent?

Answer: I don't even recall discussing this particular item of the subpoena with Professor Wright, no.

Question: Wasn't Professor Wright substantially involved in the question of litigation over the tapes?

Answer: That is correct.

Question: And did you work with him on that matter?

Answer: Yes, I did.

Question: Who was it you discussed the matter with previously?

Answer: I discussed the matter previously with the President.

Question: And did the President voice an opinion as to the accuracy of the subpoena?

Answer: I don't recall him voicing an opinion.

Question: You voiced an opinion to the President?

Answer: Yes.

Question: And when was that?

Answer: I don't recall, Mr. Ben-Veniste. It was some time probably not too long after the subpoena was issued or the litigation was commenced.

Question: Where did this conversation take place?

Answer: I don't recall.

Question: Now, Mr. Buzhardt, with respect to your giving this advice to General Haig some time in September, and to what was subpoenaed, and what was not, you, of course, had before you the fact that the conversation requested was between three people, the President, Mr. Ehrlichman, and Mr. Haldeman?

Answer: Yes, I had the subpoena in front of me.

Question: Did you consult any documentation so that you would be able to discern the President met with Mr. Haldeman just a few minutes after he met with Mr. Ehrlichman?

Answer: Yes. As a matter of fact, I consulted the same logs we had previously furnished to the Prosecutor's office, or the source material from which they were furnished.

Question: Incidentally, with respect to this matter, you were talking to Mr. Cox concerning matters relating to this subpoena, as well as other matters relating to business of the Special Prosecutor's office, isn't that fair to say, during the period of September?

Answer: Yes, from time to time.

Question: Did it occur to you to attempt to clarify with Mr. Cox what was called for in the subpoena at that time?

Answer: No, no more than it occurred to him to clarify it to me.

The CHAIRMAN. Mr. Doar, proceed.

Mr. DOAR. All right. Tab No. 60 [61].

Mr. RAYBORN. Tab 60 [61]. On October 19, 1973, Richardson met at the White House with Haig, Garment, Buzhardt, and Wright. Richardson was shown a letter from Cox stating Cox's objection to a requirement that he could not subpoena other White House papers and tapes. Richardson has testified that he was surprised that Cox thought there was such a requirement, and he suggested that another letter be sent to Cox making it clear that those were not the conditions of the proposal.

On October 19 Wright wrote Cox clarifying two points in their prior correspondence, and stating that further discussion seeking to resolve the matter by compromise would be futile.

Mr. DOAR. In connection with this paragraph I would like to just summarize the four points that Mr. Cox objected to with respect to the proposal that he received from Mr. Wright.

The first point was that the President's insistence that only one person operating in secrecy, selected by the President, only one person would be acceptable to listen to the tapes, and verify the summaries or the transcripts that were made from the tapes, and that was Senator Stennis.

The second point that Mr. Cox objected to was the unwillingness of the President to agree that Senator Stennis would become a special master of the court and under the court's jurisdiction.

The third matter was that no portion of the tape, the recording, would be available to the Special Prosecutor under any circumstances, and by under any circumstances that meant regardless of whether or not the court held that the original or a copy of the recording would be admissible in evidence, that the tape that was screened by Senator Stennis would not. And Mr. Cox said that as a prosecutor he found that unsatisfactory and unacceptable, that at a trial of one of these cases which he was charged with prosecuting he would be foreclosed

from requiring the production of the tape itself if the court held during the trial that it was necessary to have the tape to introduce the substance of the conversation into evidence.

Thus he would not be able to get the tape even though it meant that a judge in the trial of one of these criminal prosecutions would say to him you either produce the tape or the case will be dismissed.

And the last one I mentioned several times yesterday, that Mr. Cox was going to agree that he would not, he would foreclose for the future his right to subpoena, which really means ultimately to go to court to challenge a refusal to produce any other White House tape, paper, or document.

And in response to that——

Mr. COHEN. Mr. Doar, did this come about as the result of a letter to Mr. Cox or as a result of Professor Wright's telephone conversation with Mr. Cox?

Mr. DOAR. Let me just refer you to 60.3 [61.3]. Mr. Cox begins his reply: "Thank you for your letter concerning our telephone conversation last evening." I believe the letter is at 58.6 [59.6], where you see Mr. Wright begins: "This letter confirms our telephone conversation of a few minutes ago."

And then Mr. Cox writes back, on the morning of the 19th, and then he goes into point 1, point 2, point 3, and point 4.

He points out at point 4, and this is at the bottom of the page: "I must categorically," and this is at 60.3 [61.3], "I must categorically agree not to subpoena any other White House tapes, paper, or document. This would mean that my ability to secure evidence bearing upon criminal wrongdoing by high White House officials would be left to the discretion of the White House counsel."

Then he indicates his opinion based upon difficulties in the past, and it was predictable that there would be difficulty receiving documents, memorandums, and other papers in the future. And then he says with respect to the fourth stipulation: "Requiring me to forgo further legal challenge to claims of executive privilege. I categorically assured the Senate Judiciary Committee that I would challenge such claims as far as the law permitted."

Mr. LATTA. Mr. Doar?

Mr. DOAR. Yes.

Mr. LATTA. Yesterday we looked at an affidavit by Mr. Richardson where he set forth the fact that the President specifically eliminated the tapes, documents, and so forth when he waived executive privilege as to testimony. My question is, where or not this information ever got from Mr. Richardson to Mr. Cox?

Mr. DOAR. Congressman Latta, I don't know that. Mr. Richardson gave us no indication that the President did not limit this to tapes, or tape recordings. He made no reference to that. He just said, his statement just referred to oral testimony.

Mr. LATTA. And everything else was covered by executive privilege, right?

Mr. DOAR. That was the President's statement when he talked to Mr. Richardson on the 25th of May. That is what he said, according to Mr. Richardson.

Mr. COHEN. Mr. Doar?

Mr. LATTA. Well, I think it is pretty important to ascertain whether Mr. Cox knew the limitation under which he was operating.

Mr. DOAR. Well, I think that Mr. Cox makes it quite clear in this letter at the last paragraph that he did not know of that limitation, and that he did not understand he was under any such limitation when he took the job.

Mr. LATTA. Well, I cannot quite understand a man like Mr. Richardson making that affidavit on something so important that sometime during his discussions with Mr. Cox he did not give him the information.

Mr. HUNGATE. Mr. Chairman, wouldn't you have to go—don't we have a third party involved here, the U.S. Senate, and don't we have to go to those documents to see what the appropriate confines of Mr. Cox's charter are?

Mr. DOAR. Yes; we pointed that out. I agree with that.

Mr. COHEN. Mr. Chairman?

Mr. SEIBERLING. Well, Mr. Chairman—

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Dr. Doar, would you go back and refer to the 58.6 [59.6], Charles Wright's letter, and Charles Wright's letter doesn't say anything other than a very reasonable proposition submitted to you by the Attorney General, who was then Mr. Richardson, on behalf of the President, and it raises the question and the continuing controversy as to who first imposed this limitation upon Cox that no further information would be sought after the Stennis proposal. That letter from Charles Wright doesn't mention that.

Mr. DOAR. Well, it may not mention that, but it was clear in the context that this was in the minds of both of these attorneys.

Mr. COHEN. Of whom? Which ones?

Mr. DOAR. Mr. Cox and Mr. Wright. The reason I say that, and I was going to direct your attention, and perhaps I didn't refer you to the right place where this is referred to, it doesn't mention it in the letter specifically, but Mr. Wright then replies at 60.5 [61.5] to Mr. Cox in what he terms at the bottom of the page, "in the interest of historical accuracy," and he makes reference in the second paragraph.

Mr. BUTLER. Where are you reading, sir?

Mr. DOAR. I am at 60.6 [61.6], Mr. Wright's letter of October 19. In the second paragraph or the bottom paragraph, he says: "I note these points only in the interest of historical accuracy in the unhappy event that our correspondence should see the light of day."

And in the second and third paragraphs he refers to the fact that on one of the objections of Mr. Cox, the proposal of the Attorney General was simply silent. Now, that is proposal No. 3, which dealt with whether or not during the trial of a criminal case against a subject of Mr. Cox's investigation, if the court required the tape that Mr. Cox could compel its production. That is what he is referring to by No. 3.

Then he also goes into point 4. "In what you list as point 4 you describe my position as being that 'you must categorically agree not to subpoena any other White House tape, paper or document.'"

Mr. Wright, in what he says thereafter, affirms the fact that he

did make that a condition of the settlement. But he says that "The subject matter of that is more limited in scope than you have constructed it."

I think I was going to make this point that when we talk about Presidential papers that here you have another definition of Presidential papers by Mr. Wright, which is private Presidential papers and meetings as a different category, much smaller than the great mass of White House documents with which the President has not personally been involved.

Now, I make that point because the position of the President, if I understand it correctly, has not been to draw a distinction between memorandums that Mr. Ehrlichman might write to Mr. Haldeman as contrasted to memorandum that Mr. Ehrlichman might write to the President, or notes of a meeting that Mr. Ehrlichman might have with the President as contrasted with notes of a meeting Mr. Haldeman might have with Mr. Ehrlichman and Mr. Mitchell, for example, that they are all covered within the executive privilege. But, Mr. Wright in his letter suggests that private Presidential papers dealing with papers in which the President has been personally involved.

Mr. SARBANES. Mr. Chairman?

Mr. COHEN. The only point I was trying to make——

The CHAIRMAN. Mr. Sarbanes.

You know, the Chair, is going to state that we have been 35 minutes on one tab, and we have got 39 more to go before we complete this. And at this rate we are going to be on this book for another week, and the Chair, in the interest of having an orderly procedure, is going to insist that the members defer their questions until the book is completed.

We are going to be working on this, and it seems that members are taking up the time of other members, although I understand they may be interested in clarifying it, but a great many of us are going to be laboring through this to resolve our own doubts. And I think that it is an imposition on the rest of the members.

So, Mr. Doar, you will proceed and the questions will be deferred until after the presentation.

Mr. DOAR. Tab No. 61 [62].

Mr. RAYBORN. Tab 61 [62], on October 19, 1973, the President wrote to Richardson instructing him to direct Cox to make no further attempts by judicial process to obtain tapes, notes or memoranda of Presidential conversations.

That evening the President issued a press statement stating that Cox had rejected a proposal for compromise made by Richardson that would have included an understanding that there would be no further attempts by the Special Prosecutor to subpoena still more tapes or other Presidential papers of similar nature.

Mr. DOAR. This statement by President Nixon was a statement made on October 19, 1973, and he refers to his very limited intrusion on the independence of the Special Prosecutor. He says that he is only releasing the tapes, or that his proposal, that he is going to submit these tapes to Judge Sirica, and this is at the bottom of the page, that the contentions of Watergate would not be continued, but it would be un-

derstood that there would be no further attempt by the Special Prosecutor to subpoena still more tapes or other Presidential papers of a similar nature. Tab 62 [63].

Mr. RAYBORN. Tab 62 [63], on October 19, 1973, John Dean pleaded guilty to a one-count information charging conspiracy to obstruct justice. As part of the plea bargain, Dean agreed to cooperate with the Special Prosecutor.

Mr. DOAR. The gist of the obstruction of justice indictment is set forth in the information, and it consists of charges that Dean defrauded the United States and agencies and departments thereof. And this is page 2, of 62.1 [63.1]. "By interfering with and obstructing their lawful Government function by deceit and dishonest means."

And then on page 3, some of the means are set forth, the influencing witnesses to give false, deceptive and misleading statements and testimony; concealing and destroying evidence relevant to matters which were the subject of the investigation; giving false, deceptive and misleading statements and testimony concerning matters relevant to the investigation and the trial.

That is influencing others to do that, and doing it himself. And then another means was overtly raising cash funds for the benefit of individuals for the purpose of concealing and causing to be concealed the identities of others who were responsible for or participated in or had knowledge of these activities which were the subject of the investigation and trial.

And the next part is making offers of leniency, clemency and other benefits for the purpose of keeping the defendants' lips sealed with respect to their knowledge of what other persons were involved in this.

And if you look at page 5, among the overt acts that John Dean was charged with having committed, you begin on June 19 when he directed Liddy to tell Hunt to leave the United States, and then on June 27 when he asked General Walters to use covert funds to pay the bail and salaries of those involved.

On June 29 when he got Herb Kalmbach to raise cash funds to make covert payments. In July and October when he got L. Patrick Gray to provide him with reports of information. In August when he met with Jeb Magruder for the purpose of assisting Magruder in preparing false, deceptive and misleading testimony. And January when he instructed Caulfield to deliver an offer of executive clemency to McCord. Tab No. 63 [64].

Mr. JENNER. Mr. Chairman, I direct your attention also, ladies and gentlemen of the committee, to 60.2 [61.2] at the bottom in the left-hand column that the Special Prosecutor also promised not to prosecute Mr. Dean for any other Watergate-related crimes, reserving only the right to prosecute him for any perjury that may occur in the future. In subsequent tabs you will find that practice by way of a separate letter by the Special Prosecutor.

And then I also call your attention to the preceding paragraph where it is recited that this particular guilty plea will subject him to a maximum 5-year prison term, possible 5-year prison term, and a \$10,000 fine, with sentencing deferred until the bargain is kept.

Mr. SEIBERLING. Where is that, Mr. Chairman?

Mr. JENNER. At 62.2 [63.2], left-hand column, last two paragraphs.

The particular item to which I immediately made reference is the last three lines of that next to the last paragraph in the left hand column, and the confirming letter we can afford you if you wish, but that New York Times item does state the substance of it.

The CHAIRMAN. Mr. Butler? For clarification only.

Mr. JENNER. My recollection is that we have the letter itself. If not, I am sure we can obtain it.

Mr. OWENS. We can rely on the New York Times for the best evidence because they usually are.

Mr. JENNER. All right, we will inquire into that.

Mr. BUTLER. Counsel, I am not sure I heard the exchange with Mr. Owens here, but the Dean statement which appears on page 23, is that somewhere as an exhibit? Is this a statement he made in open court or at the time he pleaded guilty, and if it is, do we have a copy of it? That is my question. I do not care what the New York Times has to say about it.

Mr. DOAR. I don't believe it was in the transcript made in open court. I believe it was distributed after or made after the court hearing concluded. But, we may be able to get a copy of it, and if we can, we will provide it for you.

Mr. BUTLER. I think it would be excellent.

Mr. DOAR. Tab No. 63 [64].

Mr. RAYBORN. Tab 63 [64], on October 20, 1973, Richardson wrote the President. Richardson stated that he had regarded the proposal he submitted to Cox as reasonable, but that he had not believed that the price for access to the tapes in this manner would be the renunciation of any further attempt by him to resort to judicial process.

Richardson stated that the proposal that he had submitted to Cox did not purport to deal with other tapes, notes or memoranda of Presidential conversations, and that in these circumstances he would hope that some further accommodation could be found.

Mr. WALDIE. Mr. Chairman, may I interrupt?

The CHAIRMAN. Is it for the purpose of clarification, or are we going to debate a point?

Mr. WALDIE. Clarification on Mr. Butler's last point. In the New York Times article it says Mr. Dean's attorney, Charles Shaffer, read into the record a letter dated yesterday on which Mr. Cox formally offered to bargain. So, I presume it is a part of that transcript.

Mr. DOAR. Well, I didn't understand that was Congressman Butler's question. I thought his question was not the letter, but rather the statement that Mr. Dean made.

Mr. WALDIE. Oh, I am sorry. I would like to have a copy of the letter then.

Mr. DOAR. We will get that.

Mr. WALDIE. I am sorry, Mr. Chairman.

The CHAIRMAN. Please proceed.

Mr. DOAR. I think the committee members would want to look at Mr. Richardson's letter to President Nixon dated October 20. It is found at 63.1 [64.1], and it is reproduced in the hearings with the Special Prosecutor. In the first paragraph of the letter it is clear that Mr. Richardson understands his direction that he is to tell Mr. Cox that he is to make no further attempts by judicial process to obtain tapes, notes or memoranda of Presidential conversations.

Then Mr. Richardson goes on and says that :

Of course, as your cabinet officer, you, of course, are free to withdraw or modify any understanding which I had with you. But, the situation stands on a different footing with respect to the role of the Special Prosecutor.

Mr. Richardson said :

Acting on your instructions that I would have authority to name the Special Prosecutor, I announced a few days before my confirmation hearings began that I would, if confirmed, appoint a Special Prosecutor and give him all of the independence, authority and staff needed to carry out the task entrusted to him.

Then he goes on in the next paragraph and says :

I specified that he would have full authority for determining whether or not to contest the assertion of executive privilege or any other testimonial privilege.

And then at the bottom of the page he says in his opinion that he did not believe that the price of access to these tapes should be the renunciation of any further attempt by Mr. Cox to resort to judicial process, and that he felt that Mr. Cox, the way he had proceeded in seeking the Watergate subpoenas; that is, by making a showing of compelling necessity, if that rule was followed in the future, that that would adequately and properly protect the President's concern about the confidential communications. Tab No. 64 [65].

Mr. RAYBORN. Tab 64 [65], on October 20, 1973, the President instructed Richardson to discharge Cox. Richardson told the President that he could not comply with this directive and submitted his resignation. Haig thereupon called Deputy Attorney General William Ruckelshaus and asked Ruckelshaus to fire Cox. Ruckelshaus refused to carry out the President's directive and resigned. Haig called Solicitor General Robert Bork. Bork went to the White House where he agreed to fire Cox and signed a letter discharging Cox.

Later that night White House press secretary Ziegler announced that the President had abolished the Office of the Watergate Special Prosecution force.

Mr. DOAR. Mr. Richardson's statement with respect to what took place on that date is set forth on tab 64.1 [65.1]. It is bracketed closely at the bottom of the first page and at the top of the second page, but the committee members may wish to read the whole statement in which Mr. Richardson says that he did not act on his instruction but sent the President a letter, and the President decided to hold fast on the position he had announced the night before, and when this became apparent, the issue of Presidential authority versus the independence and public accountability of the Special Prosecutor was squarely joined.

At the next page, beyond the bracket, Mr. Richardson said :

At stake, in the final analysis, is the very integrity of the governmental processes I came to the Department of Justice to help restore. My own single most important commitment to this objective was my commitment to the independence of the Special Prosecutor.

He then contrasted the two positions, on the one hand, the President's attachment to the principle of Presidential confidentiality, and his commitment to the Senate for the independence of the Special Prosecutor to use judicial process. And he said that was the issue between the two individuals.

The committee members may wonder at Richardson's log, 64.3 [65.3], why the question marks were there, and to my knowledge we did not verify this with Mr. Richardson, and so I cannot give you the answer to that.

Mr. JENNER. Excuse me, John. Staying with 64 [65] for a moment, in the last sentence where it says later that night White House Press Secretary Ziegler announced that the President had abolished the Office of the Watergate Special Prosecution force, the fact is, and it is pertinent here and to the time of the appointment of Mr. Jaworski on November 5, that there was no significant interruption in the work of the Watergate Special Prosecutor's staff during this period. They remained in the staff quarters, the staff remained the same, and they received the same investigative and administrative support from the executive branch of the Government, the Department of Justice, that they had been receiving, and the FBI and the IRS agents continued to perform investigations for the Special Prosecutor's office.

And as you know, the Department of Justice has a bill before the Congress to extend the life of the Watergate grand juries. It seems to me, Mr. Doar, that this is noteworthy because it indicates that there was no Presidential effort to destroy the office of the Special Prosecutor during this period, and that the thrust, it is fair to say, was action against Mr. Cox alone and not his office, despite the statement of Mr. Ziegler in the press announcement.

Mr. DOAR. Tab No. 65 [66].

Mr. RAYBORN. Tab 65 [66], on October 23, 1973, the President authorized his special counsel Wright to inform Judge Sirica that the subpoenaed tapes would be turned over to the court.

Mr. DOAR. At page 65.1 [66.1], at page 1278, just outside the bracket, Mr. Wright testified or was asked if he heard the nine tapes, and he said, "I have never heard any tape."

Question: In other words, your projection is against a great deal of ignorance as to what is on the tapes?

Answer: Of course.

Tab. 66 [67].

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Just a point of clarification, Mr. Doar. I was wondering why the tab did not state, on 65 [66], the date on which the President was obliged by the court order to turn over the tapes? I mean, did not the court require compliance by the 19th?

Mr. DOAR. The court order did require compliance by the 19th. I checked that last night.

Ms. HOLTZMAN. Don't you think that there should be some indication on the tab stating that?

Mr. DOAR. Yes. Tab 66 [67].

Mr. RAYBORN. Tab 66 [67], on October 26, 1973, the President announced at a news conference that he had decided that Acting Attorney General Bork would appoint a new Special Prosecutor. The President said that it was the time for those who were guilty to be prosecuted and those who were innocent to be cleared. The President stated that he would see that the new Special Prosecutor had the cooperation from the executive branch and the independence that he needed to bring about that conclusion.

The President stated in a response to a question that he had dismissed Cox when Cox rejected a proposal that Richardson and others had approved.

Mr. DOAR. The President's statement with respect to independence and total cooperation is found at page 1289 of tab 66.1 [67.1], and the statement by the President with respect to approval of the proposal by Attorney General Richardson is found in the left hand column within the brackets at 1290 where the President says: "Attorney General Richardson approved this proposition. Senator Baker, Senator Ervin, approved of the proposition. Mr. Cox was the only one that rejected it." Tab No. 67 [68].

Mr. RAYBORN. Tab 67 [68], on October 30, 1973, Buzhardt informed Judge Sirica that the subpoenaed recordings of the June 20, 1972, telephone conversation between the President and John Mitchell, and the April 15, 1973, meeting between the President and Dean had never been made.

Mr. DOAR. This came out initially at a closed session between counsel and the court, and the court made the disclosure public the next day.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. On what date was that subpoena issued? July 23?

Mr. DOAR. Yes, that is right. July 23. Tab 68 [69].

Mr. RAYBORN. Tab 68 [69], on October 31, 1973, Leon Jaworski, who had been selected to be Special Prosecutor, met with General Haig. Jaworski has testified that he discussed with Haig the conditions of his acceptance of the job of Special Prosecutor. Jaworski has testified that Haig went into the President's office, and that when he returned he told Jaworski that the President understood Jaworski's position and agreed to it.

Jaworski understood that he had the right to proceed against anyone, including the President.

Mr. DOAR. Mr. Jaworski related how General Haig called him and asked him if he would consider appointment as Special Prosecutor, and Mr. Jaworski at first demurred, and then General Haig assured him that he would have complete independence.

And Mr. Jaworski agreed to come to Washington to discuss the matter with General Haig. He did discuss it with General Haig and they had such discussion in specific terms, such discussion that he would have the maximum independence within the power of the President to give, absolutely free to prosecute anyone including the President, and freedom to go after documents.

Mr. Jaworski said that after he laid down these conditions that General Haig left him and went into see the President, and stayed with the President for about 30 minutes, and that he then returned and said that the President understood Mr. Jaworski's position and agreed to it.

The testimony with respect to these conditions are first at the bottom of 507 at tab 68.1 [69.1], where he said:

I told General Haig that unless I felt there was such an independence as really reached the maximum within the President's power to give, I felt that I should not accept, and nor did I think it would be acceptable to the American people.

And then on the next page at 571 the chairman asked Mr. Jaworski, and this is the 15th line down: "You are absolutely free to prosecute

anyone, is that correct? And Mr. Jaworski answered: "That is correct, and that is my intention."

And the chairman said: "And that includes the President?" And Mr. Jaworski said: "It includes the President of the United States."

And the chairman said: "And you are proceeding this way?"

And Mr. Jaworski said: "I am proceeding that way."

On the next page at 573, Senator McClellan said:

I understand that your understanding with the White House is that you have a right, irrespective of the legal issues, that gives you the right to go to court if you determine that they have documents you want, and materials that you feel are essential and necessary in the performance of your duties, and in conducting a thorough investigation and following up with prosecution thereon, and you have the right to go to court and raise the issue against the President and against any of his staff with respect to such documents or materials, and to contest the question of privilege?

And this was the matter that Mr. Cox insisted upon and was the matter that was not resolved between Mr. Cox as Special Prosecutor and the President.

Mr. WIGGINS. Mr. Chairman, just a point of clarification.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Are you going to refer us to a reference in which the White House agreed not to contest these issues?

Mr. DOAR. No.

Mr. WIGGINS. Do you know of any such reference?

Mr. DOAR. No; I don't know of any such reference. I don't know of any such reference.

Mr. WIGGINS. OK. Thank you.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. The gentleman from California raises a good point I think, and I think in the hearings of the Special Prosecutor before a subcommittee of this committee Mr. Jaworski appeared, and Mr. Bork did too, and I think, as far as I can find or know, there is no written assurances or have we found any written assurances of that nature given to Mr. Jaworski from the President or Mr. Haig.

Mr. DOAR. No; there were no written assurances.

Mr. HUNGATE. And Mr. Jaworski did not talk with the President before he took the job I think.

Mr. DOAR. He did not.

Mr. HUNGATE. His assurances were from Mr. Haig.

Mr. DOAR. Yes, but Mr. Haig, according to Mr. Jaworski, Mr. Haig left him and went in and talked to the President.

Mr. HUNGATE. And then came back.

Mr. DOAR. And then came back and said the President understood and agreed to these conditions.

Mr. HUNGATE. That's right. And if Mr. Haig should be gone, I think the testimony in the hearings before this committee would indicate perhaps if Mr. Haig were gone, the assurances would be gone with him. We have nothing further in writing concerning these assurances from the President or Mr. Haig?

Mr. DOAR. No we do not. But, I don't think that—I mean I think, Congressman, that the President in this case did give those assurances, and I don't think there is any question about that, the assurances that

Mr. Jaworski would be free to go to court, sue the President, free to go to court and to get documents.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti, is it for the purposes of clarification?

Mr. MARAZITI. Yes; for clarification. Clarification as to, you know, what the relevancy of this particular thrust might be? Is there some—

Mr. SEIBERLING. That's why we are here.

Mr. MARAZITI. What is the point involved here as far as an impeachable offense is concerned?

Mr. DOAR. Well, we are just in this last exchange, Congressman, discussing three positions, one position is that the Special Prosecutor would have no right, or must agree that he would not go to court to challenge the President's assertion of executive privilege. The second point was that the Special Prosecutor could go to court to challenge the President's right to assert executive privilege and the third position would be that the President would not assert executive privilege with respect to any document that the Special Prosecutor wanted.

Now, Mr. Cox was fired because he wanted the second assurance and thought he had it. And when Mr. Jaworski was hired, he was given that second assurance.

Mr. MARAZITI. Yes, but the point is so what is the impeachable offense we are driving at as far as Mr. Jaworski is concerned?

The CHAIRMAN. I think that the question is absolutely out of order. Mr. Doar.

Mr. SEIBERLING. Mr. Chairman?

Mr. MARAZITI. Well, what is the usual procedure here?

The CHAIRMAN. You can ask questions in clarification of the points that have been made merely for the purpose of having counsel reply to that and nothing more.

Mr. SEIBERLING. Mr. Chairman?

Mr. OWENS. Mr. Doar, what would be a legal situation now if the President discharged Mr. Jaworski, given assurances that he had given congressional leaders and so forth? Has anyone researched that? Is there any question of his right to fire the Special Prosecutor?

Mr. DOAR. Well, there is a question about that. I think that that is a very complicated question and I could probably talk to the committee for 10 or 15 minutes on it.

Mr. OWENS. Is there a staff memo or something on that subject?

Mr. DOAR. No, there is not.

The CHAIRMAN. I believe the question is out of order. The Chair insists that we ask for recognition purely to have a matter clarified, and I don't know that the members seem to understand this. Counsel isn't here to give his interpretation of what the facts are, other than to restate the law or to present the information. He cannot resolve the questions for you.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I believe this is just clarification. It does not appear what date this testimony was given.

Mr. DOAR. On what date?

Mr. SEIBERLING. Yes.

Mr. DOAR. Well, I will have to get you that. Tab No. 69 [70].

Mr. RAYBORN. Tab 69 [70], on November 1, 1973, Acting Attorney General Bork announced that he had appointed Leon Jaworski Special Prosecutor. Bork stated that Jaworski had been promised the full cooperation of the executive branch in the pursuit of his investigation and that the President had given his personal assurance that he would not exercise his constitutional power with respect to discharge or limited independence of the Special Prosecutor without first consulting designated Members of Congress.

Mr. DOAR. And Mr. Bork said that if Mr. Jaworski should disagree with the decision of the administration with regard to release of Presidential documents, there would be no restriction places on his freedom of action. Tab No. 70 [71].

Mr. RAYBORN. Tab 70 [71]. Buzhardt has testified that on November 5, 1973, Haig informed Buzhardt that a dictabelt of the President's recollections of his April 15, 1973, conversation with Dean could not be located. The President has stated that on the weekend of November 4 and 5, 1973, upon checking his personal dairy file, he was unable to find the April 15 dictabelt.

Mr. DOAR. This concerns the April 15 conversation with John Dean and to refresh the committee's recollection, on the 18th of April the President told Henry Petersen that he had the conversation with John Dean on tape and offered to let Henry Petersen listen to it.

Henry Petersen said he didn't want to listen to it. Then on the 11th of June Mr. Cox wrote Mr. Buzhardt and asked for the tape of that conversation and Mr. Buzhardt wrote back on the 16th of June and said the President doesn't have a tape of that conversation, he has a tape of his recollection of that conversation, which he dictated either after the conversation or at the end of the day.

I don't recall whether he said it was in accordance with his customary practices.

Now, Mr. Buzhardt testifies on November 12 that Colonel Haig informed him that the dictabelt could not be located and if you will look at 70.1 [71.1] at page 1103: "Question. When did it come to your attention for the first time there was no dictabelt of the President's recollection, Mr. Buzhardt?"

Then he said: "I believe that was on November 5, last Monday, a week ago."

Now, when Mr. Buzhardt speaks like that, if you read all of his testimony, it seems clear that he is speaking about not that there was no dictabelt, but that the dictabelt could not be located. And if you look at 1105 Mr. Buzhardt is making an assumption, of course, but he said "I assumed the President caused his own files to be searched. Whether he did it himself or whether he looked or his Secretary or somebody else did, I frankly did not make an assumption."

And then if you look at 70.2 [71.2], there is General Haig's testimony and Mr. Ben-Veniste asked General Haig: "You don't recall any conversation around June or thereafter about this matter, the matter of the April 15 dictabelt?" And General Haig said "No, I don't. In fact, I don't know too much about that subject.

"Q. The first time you learned of it was when you were at Key Biscayne?"

There was a weekend in November when Mr. Buzhardt and Mr. Garment were discussing it or what had been produced for the court and on page 2073 the question, the third question on the page is "Did Mr. Buzhardt ask you generally whether you could search the President's files in order to locate documentation which was called for in the subpoena?" And he said "There was a search that weekend looking for anything, as I recall, that would shed light on the contents of that discussion with Mr. Dean that was not recorded and that involved, I think, review of material and meetings before and after that date." And then on the next page, 2074: "Did you tell Mr. Buzhardt that you would be responsible for causing that search to be made?" And he said: "I may have told him that I would raise it with the President. And I recall discussing it with the President, that we were trying to ascertain from either his diary or other possible source a means of shedding light on the contents of the discussion." And then he says at the next answer: "I do recall there was quite a search made by Miss Woods into the President's own files of his diary which would have been probably where the dictabelt would have been preserved. And I was aware on several occasions when I was in the President's office in Washington when Miss Woods came in with a piece of what she thought might be dictabelt material or diary material." And then on the next page in the middle of the page in answer to the question, and the question was:

"Do you recall when thereafter, if at all, you made any report to Mr. Buzhardt as to the availability or ability to find the dictabelt in question?"

"A. Whether it was that weekend or early that week I am not sure, but I do know the President reviewed his diary envelope as I recall, he found that instead of a belt that he had his personal notes."

Now, he conveyed that directly to Mr. Buzhardt, but I think I may have to—it would seem from that that the way the President kept his own records with respect to conversations was also in envelopes in which he kept both his notes, as well as dictabelts of dictation he made either after the meeting or at the end of the day, and that these were in the custody of Rose Mary Woods.

And then at 70.3 [71.3] the President says in the bracket at 1330 that he caused his personal diary file to be searched and he found that "My file for that day consists of personal notes of the conversation held with John Dean the evening of April 15, 1973, but not of the dictation belt."

The committee will remember that we presented to it the personal notes in another one of the books that we have already presented.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. SEIBERLING. At tab 70 [71]—

The CHAIRMAN. Mr. Seiberling, just a moment. Mr. Donohue.

Mr. DONOHUE. I would like to inquire of counsel whether or not all of these tapes and these dictabelts were under the control of the President? That is right, isn't it?

Mr. DOAR. That's right.

Mr. DONOHUE. Now, the tapes and the dictabelts were then kept in a certain part of the White House under the custody of Mr. Bull; is that correct?

Mr. DOAR. No, that is not correct. The tapes——

Mr. DONOHUE. Where did Mr. Bull come into the picture?

Mr. DOAR. Mr. Bull worked as an assistant to the President, and his role with respect to the tapes was more or less as a messenger or a delivery man. He would go down to the Secret Service on instructions of the President or Mr. Haldeman, and get, or Mr. Haig, and get tapes from the Secret Service safe and deliver them to the person he was told to deliver them to.

Mr. DONOHUE. Now, to your knowledge was an inventory kept of all of the different tapes and the different dictabelts that were kept in these certain sections of the White House under the control of supervision of the Secret Service?

Mr. DOAR. To my knowledge, there was an inventory kept of the tapes, of the tape recording system. I have no knowledge with respect to what kind of an inventory Rose Mary Woods kept of the President's personal notes and his dictabelts.

Mr. DONOHUE. Have you had a chance to look over the inventory of the different tapes?

Mr. DOAR. Yes, I have.

Mr. DONOHUE. And as you look over that——

Mr. DOAR. I have looked over part of it because it was an exhibit in one of the court files.

Mr. DONOHUE. As you looked over that inventory was there any indication that there was a tape made of the conversation between the President and Dean on April 15, 1973?

Mr. DOAR. Well, from the records it would appear that there was a tape made but it was on that day that the tape ran out, the reel ran out at 2:22 in the afternoon. The conversation was not until 9 o'clock. That is the official recording system. The indication that a tape was made was based upon the President's statement to Henry Petersen on the 18th and Mr. Buzhardt's statement to Mr. Cox on the 16th of June.

Mr. DONOHUE. Well, what about the tape of the conversation between Dean and the President on April 15?

Mr. DOAR. Well, the dictabelt has not been located, could not be located, and the tape recording system had run out.

Mr. DONOHUE. And the fact that it ran out, it should be listed on the inventory or in the inventory, should it not?

Mr. DOAR. No. The fact that it ran out would not be listed on the inventory, would not be shown.

The CHAIRMAN. The committee will recess for 15 minutes.

[Short recess.]

The CHAIRMAN. Come to order. Mr. Doar.

Mr. DOAR. Tab 71 [72].

Mr. RAYBORN. Tab 71 [72], on November 19, 1973, Acting Attorney General Bork filed an amendment to the Special Prosecutor's charter. The amendment provided that the jurisdiction of the Special Prosecutor would not be limited without the President first consulting with the majority and minority leaders in the Congress, and the chairmen and ranking minority members of the Judiciary Committees of the Senate and House of Representatives, and ascertaining that their consensus was in accord with his proposed action. On November 21,

1973, Bork wrote to Jaworski explaining that the amendment was to make clear that the assurances concerning congressional consultation applied to all aspects of the Special Prosecutor's independence.

Mr. DOAR. The indication here makes clear that the limitation on the President's power to limit the Special Prosecutor's activities went both to his discharge but as well to his independence in performing his function as Special Prosecutor. When Mr. Bork did not make this clear in the Department of Justice order, he caused it to be amended so that it would be clear. Tab No. 72 [73].

Mr. RAYBORN. Tab 72 [73], on November 21, 1973, Buzhardt informed Judge Sirica that the June 20, 1972, EOB tape contained an 18½-minute erasure. On that same day, Judge Sirica appointed an advisory panel of experts nominated jointly by the President's counsel and the Special Prosecutor to examine various tape recordings and to report on their findings.

Mr. DOAR. At 72.1 [73.], Mr. Buzhardt's testimony at 2790, outside the brackets—he is testifying in January, but he said that in the process of preparing the analysis, we have discovered and discussed this with the Prosecutor this morning, one of the tapes, the intelligence is not available for approximately 18 minutes. There is an obliteration of the intelligence for approximately 18 minutes. You cannot hear the voices. There is no indication there as to when this fact was first discovered. I do not believe that Mr. Buzhardt testified later on that effect.

What followed next was that Judge Sirica appointed a technical group of experts to examine the tapes, and if you will look at the preface to that, to the report of May 31, which is at 72.2 [73.2], you will see that this is the cover letter to the final report which we will come to later in the presentation, and we will furnish to each member of the committee a copy of that report. But for purposes now, the court reviews chronologically the history of the production of the tapes, and briefly summarizing, the court order entered judgment on August 29 requiring the President to produce certain tapes. The order was upheld by the court of appeals on October 12.

On October 23, counsel for the White House stated that there would be full compliance.

On October 30, counsel for the White House informed the court that two subpoenaed conversations had not been recorded. It further informed the court that a gap of approximately 18 minutes duration existed in the third subpoenaed conversation.

The court then said on "E" that counsel for the President and the special group prosecutor agreed upon the selection and nomination of six technical experts to examine various tape recordings and report their findings to the court.

The point there is that this was an agreed upon procedure, an agreed upon selection of the experts by counsel for the President as well as the special prosecutors.

Mr. KASTENMEIER. Mr. Chairman, could counsel inform us whether three were selected by the President and three by the Special Prosecutor, or were all six mutually and jointly selected by the participating parties?

Mr. DOAR. We think—we are going to check this—that each side

selected one, and the two that were selected agreed upon each—they agreed upon each other's selection, and then those two selected four others.

Congressman Kastenmeier, one of the criteria for the selection of the various members of the panel was competence and experience in particular disciplines, so that each of six panel members was an expert in one particular discipline that was necessary to make a thorough and exhaustive analysis of the tape. So their qualifications, I suppose, overlapped to some extent, but it is also true that they functioned like a group of surgeons in a highly complicated operation, with each bringing his competence in a particular discipline to the operation.

Mr. SEIBERLING. Would the gentleman yield?

Mr. KASTENMEIER. Yes, I yield.

Mr. SEIBERLING. The tab states that they were nominated jointly by the President's counsel and the Special Prosecutor. That is paragraph 72[73]. That would imply that in the end, both sides agreed to the entire Panel. Is that correct?

Mr. DOAR. Well, I do not understand that they both—it was a joint decision by an agreed upon panel, by both sides. It was not the court's panel, it was not the Special Prosecutor's panel, it was not the White House's panel. It was the Special Prosecutor's and the White House's panel. Both the Special Prosecutor and the White House, who were involved in the litigation on opposite sides, went away satisfied with the selection.

Mr. SEIBERLING. So they all accepted the panel?

Mr. DOAR. Yes, the two parties and the court. Tab 73 [74].

Mr. RAYBORN. Tab 73 [74], on November 26, 1973, Buzhardt submitted to Judge Sirica an analysis and an index of the materials subpoenaed by the Special Prosecutor on July 23, 1973, the document particularized claims of executive privilege. The President did not assert that any of the tapes contained national defense information.

Mr. DOAR. The last sentence there relates back to the representation that Mr. Wright made that the President had said that there was one portion of the tape that dealt with a very, very serious national security matter.

Tab 73.1 [74.1] sets that forth in a footnote, where it says in the second page, "Counsel for the President do not now contend that any of the subpoenaed material contain national defense information."

I would like to direct the committee's attention to 73.2 [74.2], because this order, in effect, is the testimony of one independent person who has heard the tapes that he held were privileged or were conditionally privileged and were not reachable under the order of the court of appeals. If you will look on page 1 of 73.2 [74.2], Judge Sirica writes, referring to item 1A1, tape recording of a meeting between the President and John Ehrlichman on June 20, 1972, in the Executive Office Building, EOB, office from 10:25 to 11:20 a.m., required under part 1 (A) of the grand jury subpoena duces tecum.

He writes:

The claim of privilege is sustained in full for the reasons that the recorded conversation consists of advice to the President by his then senior assistant for domestic affairs on official policy decisions then pending before the President, it includes conveyance to the President by his assistant of the advice of other

identified persons within the administration on the same matters, and nothing in the conversation relates to Watergate or anything connected therewith.

You will note that item 1A2 are the notes of Mr. Ehrlichman of that meeting and the court sustained the privilege in full with respect to the notes.

Then item 1B1 is the tape on which the President listens to the entire conversation from 11:26 to 12:45, and he says:

The claim of privilege is sustained with the exception of that portion of the tape recording played in open court on November 27, 1973.

That is the buzz, the 18½ minutes—

For which portion the court understands the claim of privilege to be waived. Insofar as the claim of privilege is sustained, the court's ruling is based on the fact that the conversation consists of advice to the President by a senior advisor on official decisions then pending before the President, and none of the conversation recorded relates to Watergate or anything connected therewith.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I take it that then, therefore, this is the same tape on which the 18½-minute gap occurs in which he finds that the rest of it, at least, has nothing to do with Watergate, is that correct?

Mr. DOAR. Yes, that is correct, Congressman. It would help to visualize it if you could just visualize one of these—I will not hold that up, but you will see that later in the day. It is a 6-inch reel of the Uher 5000 and those are the reels that contain 6 hours of tape. It is a reel about the size of your hand. On that particular reel on June 20, I assume that there was the 10:25 to 11:24 conversation with John Ehrlichman, and then the tape just continued on with the conversation between Mr. Haldeman and the President.

I also conclude from Mr. Buzhardt's testimony that they had a marking system or a gage that the judge could use with the tape and play the fast speed until he came to the part of the tape which the Special Prosecutor had subpoenaed. Then he could back up and listen—he could listen to that whole conversation and see whether there was any portion of the conversation that was not relevant. In this case, he got to 10:25 on the tape and he listened through to 11:24, when Mr. Ehrlichman left, and he felt that there was nothing of that that was relevant, so he sustained the claim of privilege.

Then he jumped the tape, or moved ahead to Mr. Haldeman's conversation and the first three minutes of that conversation was not relevant. Then there was the buzz for 18½ minutes. Then there was another hour or so which had nonrelevant, unrelated material on it. It all would be on one tape. That is the way the judge handled the material in camera under the order of the court of appeals.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling?

Mr. SEIBERLING. Mr. Doar, do we have in these volumes a copy of the subpoena which related to these tapes?

Mr. DOAR. Yes, it was presented to you yesterday.

Mr. SEIBERLING. Could you give us the cross-reference on that?

Mr. DOAR. We will get the cross-reference for you.

Mr. SEIBERLING. The reason for my question is whether the form of the subpoena limited it to portions of the tapes relating to Watergate or not.

Mr. DOAR. Well, Mr. Garrison made a point during the recess that in connection with the subpoena, Mr. Cox also filed some papers justifying the need for the particular document, for the particular conversations.

Mr. SEIBERLING. Are those included in these materials?

Mr. DOAR. They are not, but I think that all of that material should be included.

Mr. SEIBERLING. I agree. That is what I was getting at.

Mr. DOAR. In connection with the June 20 conversation, I understand from Mr. Garrison, although I have not seen it, that the material that was filed in support of the June 20 conversation related to a conversation that Mr. Ehrlichman had testified to between himself and the President. It appeared that it was Watergate related.

Mr. SEIBERLING. That would have a bearing on Mr. Buzhardt's interpretation that the request did not include the required Haldeman conversation.

Mr. DOAR. It would.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, would you refresh my recollection as to when is the first time that the White House becomes aware of the gap in this June 20 tape—what is the date?

Mr. DOAR. The first time that the White House becomes aware according to the testimony of members of the White House staff was when Rose Mary Woods, on the afternoon of October 1, realized, as she testified, that she had held the record button down and the foot-pedal button down at the same time while she was talking on the telephone and caused approximately a 5½-minute gap; that she then went in and advised the President, and the President's reply was, well, you do not have to worry about that, that was not subpoenaed anyway.

Mr. WALDIE. Is there any further evidence as to a time other than 5½ minutes of gap in that tape?

Mr. DOAR. The tape was sent out to the National Security Administration on or about November 14, for the purpose of making a copy and they noticed that there was this buzz on the tape and they timed it and found that it was approximately 18½ minutes and so advised someone at the White House. They advised them on the 20th.

Mr. WALDIE. Then just one final question: Do I recall correctly that Mr. Haldeman made notes of that conversation of the 18½ minutes?

Mr. DOAR. The chairman has raised that question as well. I would like to explain that.

Mr. Haldeman made notes, contemporaneous notes. There is no evidence that Mr. Haldeman listened to this tape later on and made notes. The notes that he made contemporaneously begin on the first page, at 1130 EOB, and the notes are around August 3 or 4. "check on a weekend at Walkers." Then the next note says "Hold higher end to Friday." Then "Governor S.D.," which I presume is South Dakota, "expressed concern re his election and the President wants a letter to him." Then the President dictates a letter, just a draft of a letter. Then there is something else about South Dakota and something about having later moved to Ely, Nev.

Then on the next page is this note: "Be sure that the EOB office is thoroughly checked re bugs at all times." Then there are those notes: "What's our counterattack?" "PR offensive to top this." "Hit the opposition with their activities." "Point out libertarians have created public"—there is a word I cannot read, but then "do they justify this less than stealing Pentagon Papers, Anderson's file, and so forth."

Mr. WALDIE. Do we have a copy of that?

The CHAIRMAN. Would you identify that document, Mr. Doar?

Mr. DOAR. There is one more: "We should be on the attack for diversion."

Mr. WALDIE. Do we have a copy of that?

Mr. DOAR. Yes, it was exhibit 61 in the tape hearing trial before Judge Sirica. We have reproduced it as part of the notebook. I cannot give you the tab number this morning, but I will give it to you promptly after lunch.

Mr. DENNIS. And this is Haldeman's contemporary notes of the June 20 tape, is that what we are reading?

Mr. DOAR. Contemporaneous notes?

Mr. DENNIS. Yes, that he made at the time?

Mr. DOAR. Yes.

Mr. DENNIS. And we are going to have reference to that so we can find them?

Mr. DOAR. Yes.

Mr. DENNIS. Thank you.

Mr. DOAR. Now, the court went on and went through each of these meetings, and just briefly to run through it for you, there was the dictabelt on June 20, which he turned over to the Special Prosecutor, of the President's recollection of his conversation with John Mitchell; there was a small part of the conversation of the President, Haldeman, and Mitchell on June 30; there was the conversation between the President, Haldeman, and Dean on September 15. There was the conversation between the President, Haldeman, and Dean on March 13. There was the conversation between the President, Haldeman, and Dean on March 21, with Mr. Haldeman being present for only part of that.

There was a cassette tape recording which was dictated by the President as part of his personal diary on March 21 at 8 p.m., which was containing the President's recollection. That was produced. There was a meeting on March 21 from 5:20 to 6:01. Then there was the March 22 meeting.

The there were the notes of the President's conversation with Dean on April 15.

Mr. HUTCHINSON. Mr. Chairman, may I just observe that the last page of this item that we are now reading, this photostatic copy of that, 73.2 [74.2], the last page in my book, 5, is unclear. It has gotten smeared through. I wonder if I could have another copy of page 5 of that exhibit for my book?

Mr. DOAR. Yes, we will get you that.

Mr. HUTCHINSON. Thank you.

Mr. DOAR. Tab 74 [75].

Mr. RAYBORN. Tab 74 [75], on November 27, 1973, Buzhardt sent to Jaworski six of the logs of meetings and telephone conversations with the President (Chapin, Gray, Kleindienst, Krogh, Strachan, Young)

that had been requested by Cox on June 13, 1973, the Kleindienst log furnished to the Special Prosecutor shows no meeting between the President and Kleindienst on April 25, 1973, the President has stated and Kleindienst has testified that Kleindienst met with the President on April 25, 1973.

Mr. DOAR. The log is at 74.1 [75.1]. On the second page of the log, you will see the meetings of Mr. Kleindienst from June 26, 1972, running through up until April 25, 1973, on the second page. There is no reference on this particular document of the meeting between the President and Mr. Kleindienst on that day. Tab 75 [76].

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I wanted to ask a question on the previous tab.

Where the judge says "No privilege asserted" or "No claim of privilege asserted," with respect to certain matters, was that a position that was taken subsequent to the court of appeals' decision when the matter came back before Sirica?

Mr. DOAR. Yes, this is a conditional privilege on the basis of relevance. With respect to these documents, there was no claim of a conditional privilege.

Mr. SARBANES. Subsequent to the court of appeals' decision, though?

Mr. DOAR. That is correct.

Mr. SARBANES. Earlier they had asserted that none of it had to be produced, is that correct?

Mr. DOAR. Earlier they had asserted before—before Judge Sirica and the court of appeals, there had been an assertion of an absolute privilege.

The CHAIRMAN. Mr. Doar, might I inquire what the significance of the statement in the tab, "Kleindienst log furnished to the Special Prosecutor shows no meeting between the President and Kleindienst on April 25," and "The President has stated and Kleindienst has testified that Kleindienst met with the President on April 25."

What purpose does that serve?

Mr. DOAR. Well, this was material that was furnished to the Special Prosecutor in the course of their investigation. There was an omission from, an inaccuracy with respect to the record of meetings and telephone conversations between the President and Richard Kleindienst.

The CHAIRMAN. There is no other significance that is attached, other than that there is an omission?

Mr. DOAR. That is right.

Mr. SEIBERLING. Mr. Chairman, on that point, has any effort been made to determine whether the inaccuracy occurred in the log or in the copy that was transmitted to the Special Prosecutor of the log?

Mr. DOAR. Well, we have not made that effort.

Mr. SEIBERLING. Well, should that not be done?

Mr. DOAR. Well, we have made that effort, yes. We asked for the President's diaries for this period. The President refused to give them to us.

Mr. SEIBERLING. I am not referring to the diaries but simply a recheck of the log to see if the error was in the log or in the preparation of the copy of the log that was given to the Special Prosecutor.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. There may not be a discrepancy here, Mr. Doar.

April 25 shows telephone conversations with Kleindienst, right?

Mr. DOAR. Yes.

Mr. FLOWERS. And the two substantiating documents at 74.3 [75.3] and 74.4 [75.4] say that Attorney General Kleindienst, on 74.3 [75.3], informed me, and on 74.4 [75.4], it says "Attorney General Kleindienst came to me." Both of those instances could very well relate to a telephone conversation, could they not?

Mr. DOAR. I do not think so, because of Mr. Kleindienst testimony in 74.2 [75.2].

Mr. WIGGINS. Mr. Chairman, may I ask a question for clarification?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, there is no question, is there, about the accuracy and completeness of the President's log on the 25th of April?

Mr. DOAR. We have not seen it.

Mr. WIGGINS. Well, is it not in the tab?

Mr. DOAR. No.

Mr. WIGGINS. Whose log is that?

Mr. DOAR. That is a digress—we assume that is a digest from the President's log.

Mr. WIGGINS. All right, that is a secondary piece of evidence rather than primary, is that correct?

Mr. DOAR. Yes; it is not made contemporaneously—

Mr. WIGGINS. But the tab indicates that the deficiency is in the Kleindienst log, is that correct, rather than the President's log?

Mr. DOAR. It is the Kleindienst log, but not Mr. Kleindienst's log.

Mr. WIGGINS. But we are talking about the President's log rather than Mr. Kleindienst's log, is that correct?

Mr. DOAR. I assume this information was taken and compiled off the President's log; yes. It is not Mr. Kleindienst's.

Mr. WIGGINS. I am still unclear. Is the tab attempting to show that Mr. Kleindienst's log—and I take it to mean a diary—

Mr. DOAR. No; it is not attempting to show that.

Mr. WIGGINS. All right. We are not talking about a Kleindienst's log but rather the President's records of visits with Mr. Kleindienst, either in person or by telephone?

Mr. DOAR. Yes.

Mr. SEIBERLING. Mr. Chairman, I have never received an answer to my question.

Mr. DOAR. We will attempt to check that.

Mr. SEIBERLING. I think that should be done.

Mr. DENNIS. Mr. Chairman?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Doar, you have interviewed Mr. Kleindienst. In your interview with Mr. Kleindienst, did you inquire as to the fact of a meeting on April 25?

Mr. DOAR. Yes, we did.

Mr. McCLORY. And he confirmed that there was a meeting, a physical meeting?

Mr. DOAR. Yes, that is my recollection. That was the end of a long

interview where we had gone over a number of meetings during the day. When you ask me that, do I have a clear independent recollection now that he said there was a meeting that day, my impression is that he did.

Mr. McCLORY. You might verify that. I am inclined to agree with Mr. Flowers that the implication of the two records that we have here from the President indicates a communication, but they do not indicate a physical meeting.

Mr. DOAR. I tell you, if you will look at Mr. Kleindienst's testimony at 74.2 [75.2] at page 3574, within the bracket, he says:

When I got back from my lunch in honor of Dean Griswold, soon thereafter I received a call from the White House that if I could come over right away, I could see the President. I did. I have him—I had those memos, those papers with me. I had some—I had a couple of cases that, you know, I could discuss, you know, a little note pad, but I did not give those citations. He, without hesitation, one moment's hesitation, said that the course of action that I was going to pursue was the only thing possible to be done. He caused the memos to be xeroxed. He kept a copy of the memos and I left.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Along the lines of the point raised by Congressman Wiggins, perhaps the statement of information could be clear. Instead of saying the Kleindienst's log, if you said the log of the contacts between the President and Mr. Kleindienst, that would be clearer.

Mr. DOAR. I would agree with you.

Ms. HOLTZMAN. Also, you might add on the bottom that we have asked for the daily diaries from the President and he has not produced them. That might make that point clear, too.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Further question for clarification.

Both parties, as I understand it, say they did meet that day, is that correct?

Mr. DOAR. Yes.

Mr. DENNIS. And they have given their versions, I take it, of what they talked about?

Mr. DOAR. Yes.

Mr. DENNIS. Do we know about Kleindienst's log or whether he kept one?

Mr. DOAR. Well, he kept some diaries. In our interview with him, I have to say to you that his records and recollection, using those both, are awfully shaky.

Mr. DENNIS. Do we know whether it indicates a meeting that day or whether it does not?

Mr. DOAR. I do not think we asked him about that. We asked him to provide us copies of his diaries and he said he would.

Mr. DENNIS. At any rate, the President says they met and Kleindienst said they met and they both say what they talked about, regardless of what the logs may or may not show. Is that the situation?

Mr. DOAR. Yes.

Mr. DENNIS. Well, I thank you.

Mr. JENNER. Mr. Dennis, I arranged with Mr. Kleindienst yesterday and his counsel, a young man in Jack Miller's office who represents Mr.

Kleindienst, to go over and make xeroxed copies of Mr. Kleindienst's diary. We are in the process of doing that.

Mr. DOAR. Tab 75 [76].

Mr. RAYBORN. Tab 75 [76], on November 29, 1973, the Special Prosecutor filed a four-count felony indictment against the President's former appointments secretary, Dwight Chapin, charging that Chapin had testified falsely before the grand jury regarding the extent of his knowledge of Donald Segretti's activities in the 1972 campaign.

Mr. DOAR. Tab 76 [77].

Mr. RAYBORN. Tab 76 [77], on November 30, 1973, Egil Krogh pleaded guilty to a one-count information charging that Krogh had conspired to violate the constitutional rights of Dr. Louis J. Fielding by breaking into his office in 1971. Krogh agreed to disclose all relevant information and documents in his possession and to testify as a witness.

Mr. DOAR. In this information to which Mr. Krogh pleads guilty at page 2, he testified that he had knowledge, consent, approval and assistance of Mr. Liddy's and Hunt's trip to California on August 25 for the purpose of preparing to carry out and implement the plan and that the trip on September 1, that that was done with his knowledge, consent, approval, and assistance. Five of the members of the coconspiracy would travel to California for the purpose of implementing the plan and scheme and that they did implement it by an illegal covert breaking and entering into Dr. Fielding's office.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. A point of clarification, Mr. Chairman.

Mr. DOAR. I think Mr. Wiggins brought this up, I think yesterday, and I understand that you circulated a statement that was apparently made by Egil "Bud" Krogh before the court which seems to me to be very relevant as far as giving the picture of any Presidential involvement. I know that you circulated it and I am not at all questioning the good faith of the staff, but it seems to me this would be a perfect place, unless you are going to do it in a later book—I think we ought to have that statement and I think it perhaps ought to be in a paragraph. In other words, everybody thought he was going to implicate the President and, apparently, his statement did not implicate the President.

Mr. DOAR. Why do we not just amend this tab and ask the members to make that statement 76.4 [77.4] to this book and we will write out another statement and add that. It did not come to you today, members of the committee, it came yesterday or the day before. Then your secretaries can put it in this particular tab so you will have a reference and everybody will have the same reference.

Mr. RAILSBACK. Yes, and then it will be part of the record and I think that is really the fair way to do it.

Mr. DOAR. If that is agreeable, that is what we will do. If the committee members prefer, we will reproduce this with another memo so you can just stick the whole thing in and throw this away and it will be easier for you. Make it tab 76.4 [77.4].

I think that is what we will do.

Mr. DANIELSON. Mr. Chairman, before we leave this book, I would like to ask counsel a question. I did raise it during the recess, Mr. Doar.

Back on tab No. 64.7 [65.7] there is a comment in the Presidential documents that the office of Watergate Special Prosecution Force has been abolished as of approximately 8 p.m. That would be October 20, 1973. Then without any further ado, apparently, a week or two later, a new Special Prosecutor was appointed. Was any action taken after October 20, 1973, which reconstituted the office of Watergate Special Prosecution Force?

It has been abolished, now. The President has abolished it and then without anything else that I find in the chain of evidence here, it starts to run again.

Mr. DOAR. I do not know the answer to that. I will check it for you during the noon hour. I assume there was a reestablishment of it.

Mr. DANIELSON. It seems to be implicit, but I cannot find it.

The CHAIRMAN. Did Mr. Jenner not relate that they continued to operate the office just as though there had been no abolition of it in any way?

Mr. JENNER. Mr. Chairman, in testimony of Mr. Bork before Mr. Hungate's committee, he testified:

There has been no interruption in the work of the Watergate Special Prosecution Force. The group of lawyers assembled by Mr. Cox remains intact, has continued its work from the same quarters, with the same staff, and with the same investigative and administrative support from the Department of Justice. The grand juries have been running just as before and the Department of Justice continues to support bills now before the Congress to extend the life of the Watergate Grand Juries. The Special Prosecution Force continues to have access to the full resources of the executive branch, including assistance from the Federal Bureau of Investigation and investigations from the Internal Revenue Service.

Mr. DANIELSON. What is the date of that, sir, approximately?

Mr. JENNER. The date of this testimony?

Mr. DANIELSON. Yes, please.

Mr. JENNER. November 5, 1973.

Mr. DANIELSON. November 5, 1973?

Mr. JENNER. Yes. Now, I must add, Mr. Chairman, that the members of the Special Prosecution Force themselves did not have that feeling.

Mr. DANIELSON. Well, I do not doubt the truth of that, except that it seemed to fly in the face of this very formal statement from the White House that the office had been abolished as of approximately 8 p.m.

Mr. JENNER. One other matter, Mr. Chairman, before leaving this book. I do want to call again the attention of the committee to 76.3 [77.3], which is the Special Prosecutor's letter saying what Mr. Egil Krogh receives in return for his plea of guilty. That is the dismissal of indictments and that sort of thing.

The CHAIRMAN. We will return at 1:45.

[Whereupon, at 12:30 p.m., the committee recessed to reconvene at 1:45 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab 77 [78], book 4.

Mr. RAYBORN. Tab 77 [78], on December 19, 1973, Jaworski furnished the Senate Judiciary Committee a written summary of his understanding of the arrangement made with the President through General Haig and confirmed by Bork and Attorney General designate William Saxbe regarding the independence he was to have in serving as Special Prosecutor. Jaworski stated that it had been expressly confirmed that he was to proceed with complete independence, including the right to sue the President, if necessary; and that the President would not discharge him or take any action that interfered with his independence without first consulting majority and minority leaders and chairmen and ranking members of the Judiciary Committees of the House and Senate in obtaining a consensus that accorded with his proposed action.

Mr. DOAR. Tab 78 [79].

Mr. RAYBORN. Tab 78 [79], on January 15, 1974, the court appointed panel of experts submitted a summary report respecting the 181½-minute gap on the June 20, 1972 EOB tape. The report included interim conclusions that the erasures occurred in the process of erasing and re-recording at least five to nine separate and contiguous segments and that hand operation of the recording controls of the Uher 5000 machine examined by the experts must have been and were required to produce each erasure segment.

Mr. DOAR. There is the preliminary report of the advisory panel members of the committee and the conclusions, tentative conclusions of the report as set forth at paragraph 3. If you cross reference this paragraph to paragraph 98 [99], we will summarize and discuss the tape experts' findings when we get to paragraph 98 [99] in the final report. Tab 79 [80].

Mr. RAYBORN. Tab 79 [80], in his state of the Union address on January 30, 1974, the President said that he had provided to the Special Prosecutor all the material that the Special Prosecutor needed to conclude his investigations and to prosecute the guilty and clear the innocent.

Mr. DOAR. The President said in his speech, he referred first to a great deal of material furnished voluntarily. This is at tab 79.1 [80.1], page 3. And he says "I have provided all the material that he needs to conclude his investigations and proceed to prosecute." Tab 80 [81].

Mr. RAYBORN. Tab 80 [81], on February 14, 1974, Jaworski wrote to Chairman Eastland of the Senate Judiciary Committee that on February 4, Special Counsel to the President, James St. Clair, had written Jaworski that the President had decided not to comply with the Special Prosecutor's outstanding requests for recordings relating to the Watergate break-in and coverup. Jaworski also stated that St. Clair subsequently informed him that the President had refused to reconsider the decision to terminate cooperation with the Watergate investigation, at least with regard to producing any tape recordings of Presidential conversations and that the White House had refused cooperation in investigation of dairy contributions and had refused to allow review of files of two former staff members in the area of the Plumbers investigation. Jaworski stated that requests for documents were still pending.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. In connection with this tab 80 [81] which has just been presented to us, and tab 79 [80], the President stated in tab 79 [80] referenced material that he had voluntarily provided he said "I have provided to the Special Prosecutor voluntarily a great deal of material," et cetera. Would the committee be able to provide me and maybe us—

Mr. SEIBERLING. Could we have order, Mr. Chairman?

Mr. DANIELSON. Would the staff be able to provide me and probably the whole committee with something from Mr. Jaworski; namely, an inventory of what the Special Prosecutor had requested of the President and of what the President had furnished to the Special Prosecutor, either voluntarily or pursuant to request?

I would like to be able to evaluate this statement that enough material has been provided, and about the only way I can do that is to weigh one against the other.

Mr. DOAR. Well, Congressman, I was prepared to do that right now as part of this tab.

Mr. DANIELSON. Thank you.

Mr. DOAR. And if you would refer to the letter at 80.1 [81.1], this is Mr. Jaworski's letter to Senator Eastland, as kind of a guide, and if we could take just a little time going through that.

When Mr. Jaworski began his discussions with General Haig and Mr. Buzhardt regarding the production of evidence, and this is in the third paragraph of the letter, the White House had provided the Special Prosecutors with copies of nine Presidential conversations. This is on the first page. Nine Presidential conversations and this was as of December 12.

And he had also made arrangements with Mr. Buzhardt that a member of the staff could examine the files of the White House special investigation unit known as the Plumbers and by February 4—

Mr. SEIBERLING. Can you tell us where you are reading from?

Mr. DOAR. Yes. I am reading from the first page, the text of the letter, which starts with the second paragraph, and the paragraph is the third paragraph of the letter. It begins:

I delayed answering your letter until December 12, 1973, because at that time I was beginning discussions with General Haig and Mr. Buzhardt regarding the production of evidence. As I indicated in my response then, the White House by then had provided us with copies of recordings of nine presidential conversations.

And Mr. Jaworski goes on to say that he had had some meetings with Mr. St. Clair, and the President had refused, he had asked the President to reconsider, and at the bottom of the page, the last paragraph, he says:

Late yesterday, Mr. St. Clair informed me by letter that the President had refused to reconsider this earlier decision to terminate his cooperation with this investigation, at least with regard to producing any tape recordings of Presidential conversations.

And then at the start of the next page, he said, "In order that the committee may be fully apprised, I believe it would be appropriate to outline not only the material we have been refused, but also the material we have received." So that I would say that if you set up

a chart on the other side of the page over here, on the back of this, and if you put a line down and marked an "S" for material that was furnished voluntarily, then I can give you the figures and it might be useful to you in reviewing the material.

Mr. DANIELSON. Mr. Chairman, may I ask Mr. Doar a question?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Could you tell me, I have not read this, obviously, could you tell me whether this reflects the requests and the receipts during the entire period of the Special Prosecutor's Office, or is it only during the Jaworski period? Does it include both Cox and Jaworski or just Jaworski?

Mr. DOAR. It includes both Cox and Jaworski.

Mr. DANIELSON. Thank you.

Mr. DOAR. But it does not include all of the material with respect to logs and so forth that are covered; I mean the logs of meetings and so forth.

But first with respect to tape recordings, the White House produced seven recordings, a cassette and a dictabelt, pursuant to the order of Judge Sirica. In addition to that, after Mr. Jaworski came aboard, four conversations were furnished voluntarily, four recordings, and those recordings or conversations were conversations between the President and John Dean on February 28, two conversations between the President and John Dean on April 16, and a conversation between the President and Mr. Zeigler, Mr. Bull, and General Haig in part on June 4. You have listened to all of those conversations.

The President's representatives also permitted Mr. Jaworski to listen to 6 other conversations, so that there were in total examination of 10 conversations during the Jaworski period of cooperation, 10 conversations. I do not know what conversations these were for certain, but I believe that some of them related to conversations between the President and Mr. Colson shortly after the 1st of January. I cannot say that with certainty, and I cannot say that that was all of the conversations, but I think I could represent to the committee that Mr. Jaworski concluded after listening to those six conversations that they were not relevant to his inquiry, and so that there was a procedure at that time whereby Mr. Jaworski was being permitted to listen to conversations during that period to determine the relevance.

Subsequent to those requests, Mr. Jaworski made a request for 27 conversations. This was on January 9 and supplemented by a letter of January 22 so that there was pending at the time that Mr. St. Clair advised Mr. Jaworski of the President's decision a request for 27 recorded conversations. That request for 27 recorded conversations is subject to the proviso that you will find in the fifth paragraph of that letter dealing with relevance. That is, that if any of the 27 contained irrelevant material or subject to some other particularized privilege, then Mr. Jaworski agreed he would go and listen to the conversation alone at the White House and would not ask for it.

That summarizes, Congressman Danielson, just exactly what was the amount of cooperation with respect to tape recordings under the period of Mr. Jaworski. There were 4 recordings, 6 additional, he was permitted to listen to for a total of 10.

Mr. DANIELSON. That letter I noticed or the New York Times article of February 15. I assume it is contemporaneous?

Mr. DOAR. Yes, it is.

Now, the second area that Mr. Jaworski dealt with was the dairy contribution investigation. It is not clear from the letter what exact conversations had been produced or what were requested, excuse me, because there was discussion between Mr. St. Clair and Mr. Ruth, Mr. Jaworski having disqualified himself about narrowing the scope of the request. I think that it is reasonable to infer that these requests dealt with documents and conversations in the month of March shortly before, at the time of, and immediately after the President made his decision to increase the dairy support for that year. At any rate, prior to the time during Mr. Jaworski's tenure of cooperation, while there was cooperation, he received voluntarily three recordings and he also received a number of documents. These are court papers and they added up to maybe 125 pages of documents, something like that, that had been produced, so that in the dairy case there were three recordings and the documents. This committee has received that material. You have listened to those tapes, and that is the amount of the materials that were furnished in the dairy area.

With respect to the Plumbers, the White House voluntarily furnished one tape or one recording of a conversation, Presidential conversation. That was the conversation the President had with Egil Krogh on the 24th of July, I think, where also John Ehrlichman was there, where they talked about the polygraph as you heard that conversation, taking lie detector tests of many of the high officials of the State Department and the White House and the Defense Department, and also creating a different classification designation for very, very sensitive documents.

In addition to that one recording, the White House permitted a member of Mr. Jaworski's staff to go over and review the files on the Plumbers, of the special investigations unit, and select documents out of that file. And their recollection is that 271 documents were selected. And these documents were furnished to the Special Prosecutor, and they likewise were furnished to us.

The other area of cooperation was with respect to staff members' files and with respect to staff members' files the White House refused to permit anybody from the Special Prosecutor to review the files of any of the staff members. But, he did, the White House, Mr. Buzhardt, with respect to one former staff member, did deliver files, documents from the files of a former staff member, but did not permit the Special Prosecutor to review the files to make their own determination of relevancy. And then with another staff member the White House flatly refused to let the Special Prosecutor review the files of another former staff member. So, with respect to the staff members, there was no access by any member of the Special Prosecutor's unit to the files for review. With respect to one staff member there was a search for specific documents and that was furnished.

Let me give you an illustration of that, although this is not covered by the letter. You may remember the first page of Mr. Haldeman's log, of his telephone conversations on March 21. When Mr. Haldeman's log was first asked for, only the second page of that log was located. And

after Mr. St. Clair came, as I understand it, an additional search was made and the first page of that log was located, a search instigated following a special, specific request by the Special Prosecutor.

With respect to ITT, the Special Prosecutor received three recordings and some documents, and he said that they have been promised certain documents in connection with the FBI investigation into the possible obstruction of justice arising out of the destruction of or alteration of evidence. There were two additional requests dating back respectively to August and October, two of them and the other four to November and December. Some documents were produced in two of these, and Mr. Buzhardt reported that his limited search did not disclose any material, but we have a reason to believe there are additional documents somewhere in the White House files. Mr. St. Clair had indicated that he had not had an opportunity to review these requests since replacing Mr. Buzhardt as Special Counsel to the President.

I think, in summary, it is fair to say that there was some cooperation with respect to a search for specific documents, if the Special Prosecutor's unit could identify the specific documents. If they would like, for example, to get the log of Mr. Ehrlichman at such and such a day, or they would like to get, for example, the original of the memorandum that Mr. Hunt wrote Mr. Colson on July 27 with respect to getting the psychiatric records of Daniel Ellsberg, and they would like to get the original of that they might say "we have got a copy so we know it exists, and we know something exists from some other investigation;" and they target in and there was some cooperation about getting the originals of documents in that way.

With respect to files that were organized by subject matter or by unit, that is the Plumbers Special Investigative Unit, the White House permitted a careful examination of that file.

That is the only file that I know of that anyone has been permitted to examine outside of the White House. And there have been no files examined of any of the assistants to the President whether or not the memoranda in the file were directed to or came from the President.

Going back again to tape recordings, there were 10 furnished with respect to Watergate, 3 with respect to the diary, 1 with respect to the Plumbers and 3 with respect to ITT. That makes 17. Well, there were—

Mr. SEIBERLING. Have we heard this three on ITT?

Mr. DOAR. There was also besides those there was a cassette and a dictabelt, and that makes 19.

Mr. SEIBERLING. Mr. Chairman, have we heard the ITT tapes also?

Mr. DOAR. You have heard one of the ITT tapes.

Mr. DANIELSON. May I ask Mr. Doar another question?

The CHAIRMAN. Are we going to move on?

Mr. DANIELSON. I hope so. I would like very much to clear this up in my mind if I may. I would like to know this, do we have any tabulation anywhere of the number of documents that Mr. Jaworski and Mr. Cox requested other than this letter?

Mr. DOAR. Well, if you look at 80.2 [81.2] you will find that list and just to run over it very quickly, Mr. Chairman, as of March 11, these are schedules of the materials requested by the Special Prosecutor and refused as of March 11. And if you would circle No. 8.

No. 9, No. 11, No. 12, No. 13, No. 14, No. 15, No. 17, and No. 18, those conversations are contained in the blue books which were furnished to this committee in response to its subpoena. They're part of the White House edited transcripts.

The CHAIRMAN. They are the edited transcripts?

Mr. DOAR. Yes, I understand that there was some material furnished in addition to that with respect to ambassadorships and the townhouse matter and I have spoken to Mr. St. Clair about this and I believe we will be furnished that material as well, but I don't know the extent of it. As soon as I get that information I will provide it to you. Tab 81 [82].

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Just very briefly, I understand, I know Judge Sirica has some tape recordings which he has refused to turn over to the committee on the theory that he is simply a custodian. How many of those are relevant, do we think, to our investigation and have we subpoenaed from the President, do you know offhand?

Mr. DOAR. We think that there are two that are relevant, neither of which has been subpoenaed yet, but we have told the committee in those two cases that we would like to, at the next business meeting, present that to the committee for consideration, and those are the conversations between the President and John Ehrlichman on June 20 and the last 17 minutes of the conversation between the President, John Dean, and Haldeman on September 15.

Mr. OWENS. And there is no way we can contest that with Judge Sirica? I suppose we have argued to him, and you consider that as—

The CHAIRMAN. That matter has already been discussed with him and I think Mr. Jenner has already informed the committee regarding that.

Mr. OWENS. So we are not going to get them, in other words.

Mr. JENNER. I would not say we are not going to get them. We are thinking about it. We are trying to figure out ways to get it.

The CHAIRMAN. It has not been resolved yet. Go ahead, Mr. Doar.

Mr. DOAR. Tab 81 [82].

Mr. RAYBORN. Tab 81 [82], on February 15, 1974, the White House released a statement by St. Clair commenting on the Special Prosecutor's February 14 letter to Senator Eastland. St. Clair stated that the President believed he had furnished sufficient evidence to determine whether probable cause existed that a crime had been committed and if so, by whom.

Mr. DOAR. In Mr. St. Clair's letter or statement he made on February 15 which is at tab 81.1 [82.1], he speaks of a portion of a fifth conversation being ruled pertinent, and then there are recordings of 17 additional Presidential conversations having been furnished. I have not yet been able to reconcile that number, which is 22, but as soon as I get that information I will furnish it to the committee.

With respect to 700 documents, I think that the bulk of those documents can be thought of in three areas; 270 documents are out of the Plumbers file, over 100 documents in the dairy case that was pending in court, papers that were filed in court and the political matters memoranda of which there were 21 that usually ran from 8 to 10 pages

plus tabs. But, we did not get many tabs, so that the political matters memorandum between Haldeman and Strachan probably added up to 300 or 400 pages or 200 or 300 pages of material.

This is in the broad, now documents out of the Plumbers files and the documents in the dairy case and the political matters memos.

Ms. HOLTZMAN. Mr. Chairman.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. A point of clarification, Mr. Doar. Are you saying 700 documents, or are you referring to 700 pages of documents?

Mr. DOAR. Well, it says 700 documents. But I do not believe we have 700 documents. I think the Plumbers is 700 pages. But I just want to check that to be sure.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Do we know what the criteria are for being included as a Presidential document in this weekly compilation?

Mr. DOAR. No.

There is another point about Mr. St. Clair's statement. I have not verified this yet, either, although—that is in the next page. It is that Mr. St. Clair, in his answer, says that the production of these 40 tapes would have the necessary result of further delaying grand jury deliberations many months, and a careful review of this request that “led me to the conclusion that this new material was at least only corroborative or cumulative.”

When I read that again in preparing this, I just wondered whether the word “request” was to indicate that Mr. St. Clair had not listened to the tapes. I will attempt to verify that and advise the committee.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. This document looks a hell of a lot like the Congressional Record, with extensions of remarks, to me.

Mr. DOAR. Tab 82 [83].

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. It will be of interest to the members of the committee. I believe, to notice Mr. St. Clair, in tab 81 [82], he states that the President believed Mr. Jaworski had sufficient evidence to determine whether probable cause existed that a crime had been committed, whereas back in tab 79 [80], when the President made his statement, he said that all material that the Special Prosecutor needed to conclude his investigation and to prosecute the guilty and clear the innocent.

Mr. DOAR. Tab 82 [83].

Mr. RAYBORN. Tab 82 [83], on February 25, 1974, Herbert Kalmbach pleaded guilty to charges that he had engaged in illegal activities during his solicitations of campaign contributions in 1970, including the promise of appointment to an ambassadorship in return for a campaign contribution. Kalmbach agreed to make full and truthful disclosure of all relevant information and documents in his possession and to testify as a witness for the United States in cases in which he may have relevant information.

Mr. DOAR. Tab 83 [84].

Mr. RAYBORN. Tab 83 [84].

Mr. WIGGINS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, did Mr. Kalmbach make a statement to the court at the time he entered his guilty plea?

Mr. DOAR. I did not get a chance to read that article, so I do not know.

Mr. WIGGINS. All right. You might look.

Mr. DOAR. I will.

Mr. WIGGINS. Thank you.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, going back a moment to tab 81[82], is there somewhere coming up any evidence that indicates the position of the President or Mr. St. Clair as to the coconspirator indictment of the grand jury?

Mr. DOAR. I did not understand the question.

Mr. WALDIE. In tab 81 [82], where the President is reported as having said, by Mr. St. Clair, that enough evidence has been furnished to the grand jury to determine probable cause and who may have committed offenses, is there any comment further on from either Mr. St. Clair or the President relative to the coconspirator indictment of the grand jury?

Mr. DOAR. No. Tab 83 [84].

Mr. RAYBORN. Tab. 83 [84], on March 1, 1974, John Mitchell, II, R. Haldeman, John Ehrlichman, Charles Colson, Robert Mardian, Kenneth Parkinson and Gordon Strachan were indicted for conspiracy relating to the Watergate break-in. Mitchell, Haldeman, Ehrlichman and Strachan were also indicted for obstruction of justice and for making false statement to the grand jury or the court or agents of the FBI.

Mr. DOAR. We are going to make available to the committee in a mimeographed form all of the indictments and guilty pleas so that the committee will have it in a convenient way to refer to them. We should have that to you shortly.

Mr. SARBANES. Could you also make available the disposition of those cases where they have entered guilty pleas and been sentenced or pending sentence and so forth?

Mr. DOAR. Yes, we will, the chronology of the case.

Mr. BUTLER. And are these contemporaneous statements made by the defendants either at the time of the plea of guilty or the sentencing?

Mr. DOAR. Right.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I have a question here. I understand for instance that we are talking about people who have entered pleas. The staff, I understand, has interviewed Mr. Kleindienst. Are we going to get anything here in the way of an affidavit or anything to show what he has had to say about anything?

Mr. DOAR. Well, of course, you will have our interview available to you, Congressman Dennis. The interview has not been completed. We

still have more to do to find out some further information. But it will be available to you.

Mr. DENNIS. Well, will we have an exhibit here in the book which sets forth his statement or anything of that sort?

Mr. DOAR. We have not followed the practice of including interviews of persons that we have interviewed in the books.

Mr. DENNIS. Well, obviously, he among others that we could readily name must have some very pertinent things to say and at some point, I trust that what they were will be revealed to us in some fashion.

Mr. DOAR. Well, whatever the committee decides on that, we are ready to serve the committee.

Mr. DENNIS. Well, all right. We can take that up, no doubt, at the appropriate time, but obviously, he has some things to say, Mr. Colson has some things to say, and at some point, in some fashion, this committee has to be advised.

Mr. DOAR. I would like respectfully to say, Mr. Congressman, that if I could, I would like to try to elaborate a little on the difficulty of interviewing some of these witnesses that you have on some occasions said have some very important things to say with respect to this matter. Several of these witnesses, based on my own experience, have poor recollections of the events. You can understand that, but it is troublesome when, for example, and I use just a hypothetical case, a witness will insist that he did not attend a meeting—not that he did not recollect that he was at the meeting, but he did not attend the meeting—where the logs of all the other people at the meeting or half the people at the meeting say he was there and where the other people as the meeting say he was there.

Mr. DENNIS. Well, Mr. Doar, I can well understand and sympathize with the problems of talking to unwilling witnesses, and you have my complete sympathy and understanding on that point. The only point I am making is that you have been talking to some of these people. Even if they say they do not remember, that is significant. We need to know, obviously, at some point what they remember, what they do not, and what they have got to say or do not say on some of these points which are going to involve or not involve the main question before us. We cannot resolve that without a report on people of that kind. That is the only point I am making.

Mr. DOAR. And we are ready to report on that at any time the committee desires and in any way the committee desires.

This March 1 indictment of Mr. Colson and Mr. Ehrlichman in connection with the Watergate matter is quite a long, detailed, specific indictment. We will not stop to review it with you now, but it takes the events following the break-in and goes up through sometime in the latter part of March with respect to—the 22d of March with respect to the overt acts involved.

Then the false statements are all set forth in the indictment itself, in the perjury charges or making false statements to the Senate select committee.

Mr. WIGGINS. May I inquire, Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. It is true, is it not, that the defendants entered not guilty pleas on these indictments?

Mr. DOAR. Yes, they did, all but Mr. Colson.

Mr. WIGGINS. All except Colson?

Mr. DOAR. At the present time.

Mr. BUTLER. Do we have a copy of the indictment somewhere in here?

Mr. DOAR. No, the copy of the indictment is not there, just the summary. As I say, we have these assembled in a form where you have them altogether. A copy of the indictment will be delivered to you.

Mr. BUTLER. Oh, I see.

Mr. DOAR. It was just too bulky, we thought, to put them in the books.

Mr. BUTLER. Do I understand that when you say you are going to prepare that for us, you are also referring to——

Mr. DOAR. All of them.

Mr. BUTLER. Oh, I see.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Mr. Doar, you said except for Mr. Colson. Mr. Colson did not plead guilty to this indictment, did he?

Mr. DOAR. No, I misspoke myself.

Mr. FLOWERS. He pled guilty on the Ellsberg——

Mr. DOAR. No, he did not plead guilty to that, either; he pled guilty to the obstruction of justice or the constitutional rights of——

Mr. FLOWERS. But he also pled guilty on the Ellsberg matter?

Mr. DOAR. That is not true.

Mr. FLOWERS. What has happened——has this indictment been taken off, or is it still pending against him, these charges?

Mr. DOAR. This is a matter that is going to be taken up Friday before Judge Gesell.

Mr. FLOWERS. Thank you.

Mr. JENNER. The sentencing is Friday.

The CHAIRMAN. No, the question was whether the other indictments were dropped insofar as Mr. Colson was concerned.

Mr. JENNER. The letter to the Prosecutor does drop the other indictments as against Mr. Colson.

Mr. FLOWERS. That is what I mean.

In other words, this indictment, this tab 83 [84] indictment, has been dropped as against Mr. Colson?

Mr. JENNER. Excuse me, Congressman Flowers. Of course, that agreement of the Prosecutor is always subject to approval of the court, and that has not yet taken place. That will be presented on Friday.

Mr. FLOWERS. Thank you.

The CHAIRMAN. Please proceed.

Mr. DOAR. Tab No. 84 [85].

Mr. RAYBORN. Tab 84 [85], on March 7, 1974, John Ehrlichman, Charles Colson, G. Gordon Liddy, Bernard Barker, Felipe DeDiego, and Eugenio Martinez were indicted for conspiracy to violate civil rights of citizens in the break-in of Dr. Lewis Fielding's office. Ehrlichman was also charged with making false statements to the FBI and false declarations before the grand jury.

Mr. DOAR. Tab No. 85 [86].

Mr. RAYBORN. Tab 85 [86], on March 12, 1974, Jaworski wrote to St. Clair requesting access to taped conversations and related documents to be examined and analyzed as the Government prepares for trial in *United States v. Mitchell*. Jaworski stated that the evidence sought was material and relevant either as proof of the Government's case or as possible exculpatory material required to be disclosed to the defendants.

Mr. DOAR. Tab No. 86 [87].

Mr. RAYBORN. Tab 86 [87], on March 15, 1974, the Special Prosecutor served a subpoena on the White House calling for certain materials involving neither the Watergate coverup nor the Fielding break-in. On March 29, 1974, the White House agreed to comply with the subpoena.

Mr. DOAR. The newspaper reports indicate that this dealt with matters involving ambassadorships, but there has not yet been any public disclosure of what was in the subpoena, what was requested in that subpoena, to my knowledge. Tab 87 [88].

Mr. RAYBORN. Tab 87 [88], on April 11, 1974, Jaworski wrote to St. Clair informing him that in view of the failure to produce the materials requested by Jaworski in his letter of March 12, 1974, Jaworski would seek a subpoena for the materials deemed necessary for trial in *United States v. Mitchell*.

Mr. DOAR. Tab No. 88 [89].

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, can you tell us when the President was advised that he was named as an unindicted coconspirator in *United States v. Mitchell*?

Mr. DOAR. No; I can not.

Ms. HOLTZMAN. Thank you.

Mr. RAYBORN. Tab 88 [89]. On April 11, 1974, the House Judiciary Committee issued a subpoena to the President for tape recordings and documents relating to specified conversations which took place in February, March, and April 1973 between the President and Halde-
man, Ehrlichman, Dean, Kleindienst, and Petersen.

Mr. DOAR. Tab 89 [90].

Mr. RAYBORN. Tab 89 [90]. On April 12, 1974, Jaworski wrote to Senator Charles Percy of the Senate Judiciary Committee stating that the Government was obligated to produce at trial the material requested in Jaworski's March 12, 1974, letter respecting the trial of *United States v. Mitchell* and that the failure of the White House to produce other requested evidence was impeding grand jury investigations of matters unrelated to the Watergate coverup.

Mr. DOAR. In Mr. Jaworski's letter to Senator Percy at 89.1 [90.1], he refers to General Haig having stated that the White House had produced voluntarily 19 recordings. I am not sure whether that is including the ones that were produced in response to the subpoena and whether those are additional recordings; I do not believe so. But then you see Mr. Jaworski's observation at the bottom of the page that:

White House cooperation cannot be measured by the volume of materials produced. One must look at each request on its merits. In this regard, as your

letter to General Haig states, the Special Prosecutor should determine what documents and recordings are important for matters within his jurisdiction. The White House is not privy to the scope or results of our investigations and, therefore, is in no position to judge what material is required for the pursuit of those investigations and for the prosecution of any trials.

Mr. HUNGATE. A point of information, Mr. Chairman. Is Senator Percy on the Judiciary Committee of the Senate?

Mr. DOAR. He is not. He is not a lawyer.

Mr. HUNGATE. Then tab 89 [90] should be corrected accordingly, in line 2. He is just a Member—I should not say “just”—he is a Member of the Senate but not the Judiciary Committee.

The CHAIRMAN. I do not know that that is necessarily correct. I do not know that that is necessarily a requirement in the Senate, that you have to be a member of the bar to be a member of the Judiciary Committee.

Mr. HUGHES. I think the Illinois members indicate that he is not a member of that committee, is he?

The CHAIRMAN. He is not?

Mr. JENNER. I know he is not a member, and I should have caught that myself when I saw it.

The CHAIRMAN. Then that should be corrected.

Mr. DOAR. Tab 90 [91].

Mr. RAYBORN. Tab 90 [91]. On April 16, 1974, the Special Prosecutor, joined by defendants Colson and Mardian, moved that a trial subpoena be issued in *United States v. Mitchell* directing the President to produce tapes and documents relating to specified conversations between the President and the defendants and potential witnesses. On April 18, 1974, Judge Sirica granted the motion.

Mr. DOAR. This request for this subpoena dealt, if my recollection serves me correctly, with 64 recorded conversations, of which 20 were contained in the White House edited transcripts furnished to this committee, so that there were 44 other recorded conversations requested in this trial subpoena, if my memory serves me right.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I notice that the Special Prosecutor and the defendants joined in the motion, so I take it that the material requested was in part for the prosecution's case in chief and perhaps part was defendants request for any *Brady*-type material. It has been some years since I read *Brady v. Maryland* and it would help me if any of you could tell me very briefly if there are any exceptions permitted under *Brady* or not. Is it an absolute requirement, so long as the material is relevant and might be exculpatory, or are there exceptions?

Mr. JENNER. Under *Brady*, Congressman Wiggins, I do not know whether I would call this an exception, but the court will frequently review the materials in camera to decide whether they are relevant. A, or, B, even deciding that they are relevant, whether they are sufficiently prohibitive or waiting to be required to be produced. The subsequent developments in *Brady* since it was decided, which was some years ago now, as interpreted by the district courts and the courts of appeals and the U.S. Supreme Court, is a continuing, not necessarily a broadening of *Brady*, but an affirmative enforcement of and favorable view by the courts of the duty of the prosecution to make, volun-

tarily to make available to the defense that which is exonerative and sometimes that which is necessary to supply keys or bridges from one event to another, and that sort of thing.

Mr. WIGGINS. Under penalty of dismissal?

Mr. JENNER. That is correct, that is the only penalty the courts have enforced that I can recall of recent date. I do not recall any contempt proceedings.

The CHAIRMAN. Proceed.

Mr. DOAR. Tab 91 [92].

Mr. RAYBORN. Tab 91 [92] On April 29, 1974, the President addressed the Nation to announce his answer to the House Judiciary Committee subpoena of April 11 for additional Watergate tapes. The President stated that the next day he would furnish to the committee transcripts prepared by the White House of relevant portions of all the subpoenaed conversations. The President said that he personally decided questions of relevancy.

With regard to four subpoenaed conversations that occurred prior to March 21, 1973, the President informed the committee that a search of the tapes had failed to disclose two of these conversations, furnished a transcript of a portion of the March 17 conversation between the President and Dean that related to the Fielding break-in, and furnished a transcript of a telephone conversation between the President and Dean on March 20, 1973.

Mr. DOAR. Members of the committee, you may wish to make a note at the bottom of this tab that in addition to the materials subpoenaed, the President furnished 8 additional conversations or—11 additional conversations or press statements between, if my recollection serves me right, March 30 and April 30, 3 of which we had requested in our subsequent request that we submitted to the White House.

Mr. SEIBERLING. These are transcripts, edited transcripts?

Mr. DOAR. Edited transcripts.

The point, I think, is that there were some tapes furnished voluntarily, some transcripts furnished voluntarily, of conversations between the 15th and the 30th of April. But the conversation between the President and Mr. Haldeman after Mr. Haldeman listened to the March 21 tape, was not furnished.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. May I ask, Mr. Doar, if we have heard anything in respect to our request for the rest of the March 17 conversation? Did we not make a request?

Mr. DOAR. Yes, we have.

Mr. RAILSBACK. Have we heard anything on that yet?

Mr. DOAR. Mr. St. Clair has advised me that the President has that matter under consideration, that he will not be able to see him until the latter part of this week, and I expect that he will advise me one way or the other thereafter, or advise me of something thereafter.

Mr. RAILSBACK. Thank you.

Mr. DOAR. Tab No. 92 [93].

Mr. RAYBORN. Tab 92 [93].

Mr. DOAR. Could I just interrupt a minute?

Tab 91.2 [92.2], I thought that I would want to call your attention

to that. This lists the first 42 items which we subpoenaed and if you will turn to page 5 of that, you will see the nonsubpoenaed materials. You will see that there was a conversation on April 8, a conversation on April 14, a conversation on April 15, a conversation on April 19, April 27, March 28, and then three statements, either by the President or Mr. Ziegler. These were furnished voluntarily by the President.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. In this appendix, this tabulation, do the item numbers et cetera compare with the listing we have set forth in our subpoena?

Mr. DOAR. Yes.

Mr. DANIELSON. So that by checking this appendix against our subpoena, we can see precisely what type of response there was, is that correct?

Mr. DOAR. You do not even have to do that if you just run down the right-hand column.

Mr. DANIELSON. But it does include all of the items?

Mr. DOAR. Yes, it would.

Mr. DANIELSON. Reference is made to all of the items—

Mr. DOAR. Yes, 42 items.

Mr. FLOWERS. Mr. Chairman, yesterday, I believe, we were told that the June 5 long tape was supplied gratuitously. Was that supplied to Mr. Jaworski and not subpoenaed?

Mr. DOAR. Yes, that was one of the four tapes that Mr. Jaworski referred to, the recorded conversations referred to in that letter of February 13.

Mr. FLOWERS. But that was not also supplied to us directly at this time?

Mr. DOAR. No, it was supplied to us when we got the material—

Mr. FLOWERS. From the grand jury?

Mr. DOAR. No—well, we got it also from the White House, because they agreed to supply us with the material that they had supplied, the White House had supplied to Mr. Jaworski. It also happened to have been included in the recorded conversations in the grand jury package. Tab 92 [93], on May 1, 1974, the President entered a special appearance before Judge Sirica and moved to quash the Special Prosecutor's subpoena issued April 18, 1974. The President invoked executive privilege with respect to all subpoenaed conversations except for the portions of 20 of the conversations he had made public on April 30 by way of edited transcripts.

Mr. DOAR. Just to repeat, there are an additional 44 conversations, if my understanding is correct, covered by the subpoena. Now, that material is filed, as I understand it, in camera, so we have not had an opportunity to examine it. The Supreme Court, where the matter is now pending, has not issued any order releasing any of the material from the in camera status.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, do I understand you correctly? Perhaps I was not listening carefully. But did you say the President had turned over tape recordings with respect to these 44 conversations?

Mr. DOAR. No; he refused to turn them over.

Ms. HOLTZMAN. In what respect has he waived the privilege regarding the transcripts?

Mr. DOAR. Well, that is one of the questions.

Ms. HOLTZMAN. Has he waived the privilege? I mean, has he waived the privilege with respect to the tapes? I am just confused by this.

Mr. DOAR. That is one of the issues that is going to be argued before the Supreme Court. It seems to me—

Ms. HOLTZMAN. It says in formal claim of privilege—the reason I am asking you this is on 92.2 [93.2], it says:

Portions of the 20 conversations described in the subpoena have been made public and no claim of privilege is advanced with regard to those Watergate related portions of those conversations.

Does that mean that the President is going to turn over the tapes?

Mr. DOAR. I did not so understand it. I have not heard anything about those tapes being available. Tab No. 93 [94].

Mr. RAYBORN. Tab 93 [94], on May 15, 1974, the House Judiciary Committee issued a subpoena to the President for the production of tape recordings and other evidence relating to specified conversations between the President and Haldeman, Colson, and Mitchell, on April 4, 1972, and on June 20 and 23, 1972. On the same day, the committee issued a subpoena to the President for the President's daily diaries for certain specified time periods in 1972 and 1973.

Mr. DOAR. We have received an edited White House transcript of the April 4 conversation between the President and Mitchell. The other materials we have not received. Tab 94 [95].

Mr. RAYBORN. Tab 94 [95], on May 20, 1974, Judge Sirica denied the President's motion to quash the Special Prosecutor's subpoena for tape recordings and other documents in *United States v. Mitchell* and ordered the President to produce the objects and documents.

Mr. DOAR. 95 [96].

Mr. RAYBORN. Tab 95 [96], on May 20, 1974, Jaworski wrote to Senator Eastland informing him that the President was challenging the right of the Special Prosecutor to bring an action against him to obtain evidence in *United States v. Mitchell*. Jaworski stated that this position contravened the express agreement made by Haig, after consultation with the President, that if Jaworski accepted the position of Special Prosecutor, he would have the right to press legal proceedings against the President.

Mr. DOAR. That is set forth in Mr. Jaworski's letter at the bottom of page 1, 95.1 [96.1], where he says:

After the court determined to hold further proceedings in camera, White House counsel for the first time urged the court to quash the subpoena on the additional ground that the Special Prosecutor had no standing in court because the matter of his obtaining the tapes in question involved "an intra-executive dispute". As stated by counsel for the President in the argument before Sirica, it is the President's contention that he has ultimate authority to determine when to prosecute, whom to prosecute, and with what evidence to prosecute.

Then he goes on to set forth that that is contrary to the agreement he had made with General Haig after consultation with the President before he accepted the position. Tab 96 [97].

Mr. RAYBORN. Tab 96 [97], on May 22, 1974, the President informed

House Judiciary Committee Chairman Rodino that he declined to produce the tapes and documents covered by the committee's subpoenas of May 15, 1975, the President asserted that the committee had the full story of Watergate insofar as it related to Presidential knowledge and Presidential actions.

Mr. DOAR. No. 97 [98].

Mr. RAYBORN. Tab 97 [98], on May 30, 1974, the House Judiciary Committee issued a subpoena to the President to produce documents and tape recordings of specified conversations involving the President and Haldeman, Ehrlichman, Dean, Colson, and Petersen.

Mr. DOAR. Tab 98 [99].

Mr. RAYBORN. Tab 98 [99], on May 31, 1974, the court-appointed panel of experts filed their final report on the 18½-minute gap on the June 20, 1972, EOB tape. The report concluded that: (i) the erasing and recording producing the buzz on the tape were done on the examined tape, which was probably the original tape, (ii) the Uher 5000 recorder machine used by Woods for transcription probably produced the buzz, (iii) the erasures and buzz recordings were done in at least five to nine separate and contiguous segments and, on at least five occasions, required hand operation of the controls of the Uher 5000 recorder to produce the erasures and recording, and (iv) the erased portion of the tape originally contained speech which, because of the erasures and recording, could not be recovered. The panel stated that in making its final report, it had considered suggestions and alternative interpretations that differed markedly from the panel's and had discussed the material with technical advisers employed by counsel for the President.

Mr. DOAR. Mr. Chairman, we are going to distribute in a minute the copy of the experts report to each member of the committee. We have also here two of the machines, one the Sony 800 and the other the Uher 5000. That is an example of the machine, to give the committee some idea of just how those machines operated, so that some of the points that are made in the report, it might be helpful to the committee members to have a visual picture of what the machine looked like and how it operates.

There are two other matters that I wish to call the committee's attention to.

Mr. DANIELSON. Mr. Chairman, as these are being distributed, is this booklet received by us under some kind of restriction or restraint or is it public information?

Mr. JENNER. It is public information.

Mr. CHAIRMAN. Mr. Doar, would you complete the paragraphs first before we start on the machines?

Mr. JENNER. Mr. Chairman, my response to the members of panel is that it is public information in the sense that Judge Sirica entered an order in which he released the in camera treatment of these materials. I do not know—my judgment is that it is not widely distributed, however. Of course, it is received pursuant to the committee's rules of confidentiality.

Mr. SEIBERLING. Well, if it is public information, how can that be?

The CHAIRMAN. Well, these will be retained by the members?

Mr. JENNER. Yes.

Mr. DOAR. It is public information.

Mr. JENNER. I think it was distributed to the New York Times.

Mr. BROOKS. How long ago? A month ago?

Mr. JENNER. In the last couple of weeks.

Mr. SEIBERLING. Mr. Chairman, if this is public information, how can it be subject to rules of confidentiality.

The CHAIRMAN. It is public information.

Mr. DOAR. Tab 99 [100].

Mr. RAYBORN. Tab 99 [100], on May 31, 1974, the President filed a claim of constitutional privilege with respect to a grand jury subpoena issued February 20, 1974, seeking the production of correspondence between the President and former FCRP Chairman Maurice Stans regarding selections and nominations for Government offices including ambassadorships. The President asserted that, excluding the records relating to four named individuals as to whom he waived the privilege, it would be inconsistent with the public interest to produce the records.

Mr. DOAR. Tab 100 [101].

Mr. RAYBORN. Tab 100 [101], on June 3, 1974, Charles Colson pleaded guilty by negotiated plea to a one-count information charging obstruction of justice in connection with the trial of the *Ellsberg* case by devising and implementing a scheme to defame and destroy the public image and credibility of Ellsberg and his defense counsel with intent to influence, obstruct, and impede the conduct and outcome of the trial.

Colson agreed to provide statements under oath and to produce all relevant documents in his possession upon request of the Special Prosecutor and testify as a witness for the United States in any and all cases with respect to which he may have information. In return, the Special Prosecutor agreed to dismiss all charges against Colson in *United States v. Mitchell* and *United States v. Ehrlichman*.

Mr. JENNER. May I say again, Mr. Chairman, that the agreement of the Special Prosecutor is subject to Judge Sirica's judgment in the proceedings on Friday.

Mr. DONOHUE. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. I would like to ask counsel if they have any knowledge that Colson and Kalmbach have given statements to Mr. Jaworski regarding other matters that are under consideration by the district court?

Mr. JENNER. Sir, is your question do we have any knowledge as to whether Mr. Colson has given statements to the Special Prosecutor?

Mr. DONOHUE. Yes, in consideration for their special pleas or the deals that have been made.

Mr. JENNER. Congressman Donohue, we do know that Mr. Colson has been interviewed at great length by the Special Prosecutor. That is as far as I am able, from my own knowledge and Mr. Doar's knowledge at the moment, to respond to that question.

Mr. DONOHUE. Is that confidential as between Colson and Kalmbach and Jaworski? Or can we divulge it to you?

Mr. JENNER. We are not in a position to give you that detail at the moment, because we do not have it. But we can make an inquiry to discover it.

Mr. DONOHUE. Thank you.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab 101 [102].

Mr. RAYBORN. Tab 101 [102], on June 10, 1974, the President's counsel informed the House Judiciary Committee that the President declined to furnish the material called for in the committee's subpoena of May 30, 1974. In a separate letter of the same date, the President responded to Chairman Rodino's letter of May 30, 1974, for the committee respecting the refusal of the President expressed in his May 22, 1974, letter to the committee declining to produce Presidential tapes and diaries called for in the committee's subpoenas of May 15, 1974.

Mr. DOAR. In connection with the report of the technical investigation, I would like to call the committee's attention to the summary right after the index at the start and before the preface. It seems to me to be a very good synopsis of what the findings were of the experts that wrote this report.

We have, also have, but not Xeroxed for you, but will cover it in our presentation, the report to Mr. St. Clair by Mr. Michael Hecker of the Stanford Research Institute. We do have that and we will distribute that as well now. You can put that behind your tab at 98 [99].

Finally, I was advised this morning, but I do not know the content, that Rose Mary Woods' attorney, Mr. Rhyne, has filed some document with the court with respect to this technical investigation. I do not know what the report says, but I wanted to advise the committee of that fact.

Now one of our counsel, Mr. Oliphant, has made a study of this report and also is familiar with the operation of the Uher 5000, the other machine. I will ask him to explain that to you. If there are any technical questions, maybe one of the other staff members here at the table will be able to answer.

Mr. SEIBERLING. Mr. Chairman, at what point are we supposed to ask questions that we have been reserving to the end of the presentation? Now or after?

The CHAIRMAN. I thought all of the questions had been asked?

Mr. SEIBERLING. Well, earlier today you asked us to reserve questions until the end of the presentation.

The CHAIRMAN. Well, I think there is still a demonstration. Are you going to have a demonstration ready for us?

Mr. DOAR. We are ready right now.

The CHAIRMAN. We are going to have a demonstration.

Mr. SEIBERLING. Have a demonstration?

The CHAIRMAN. That is correct.

Mr. OLIPHANT. Mr. Chairman, ladies and gentlemen of the committee, we have here sitting on the table in front of me the Sony 800B and the Uher 5000 tape recorder. Now, this black one here is the Sony 800B and the Uher 5000 is the gray one which is right in front of it.

Now, these are significant because the Sony 800 is the type machine on which the White House tapes were recorded. It is also the machine which Rose Mary Woods originally began transcribing the June 20 tape on at Camp David.

Now, on page 2 of your reports there is a sort of an area photograph of these two machines.

The CHAIRMAN. When you say it is the machine, you mean a machine such as that one?

Mr. OLIPHANT. Thank you, Mr. Chairman. No, these are similar machines. Neither one of these is the original. The Uher 5000 is a machine which the staff has rented and the Sony 800B is another machine we have at our disposal, but they are the same models.

Now, the Sony 800B had to be operated manually when she was transcribing and you will notice that the stop button, if you can see it right there in the photograph, in the foreground, is quite a distinctive key. It is right here.

Mr. SEIBERLING. We cannot see it over on this side.

Mr. OLIPHANT. If you turn to page 2, if you will turn to page 2 you can see the Sony machine and you can see the stop button.

Ms. HOLTZMAN. We have a different stop button than you have. There is no stop button on ours.

Mr. OLIPHANT. There is a stop button. This is the stop button right here. The top button right there above these three.

Mr. BUTLER. It has "stop" written on it?

Mr. OLIPHANT. The one that has stop written on it. It is the one long one above the three. Do you see that? Now the significance of this is that it is very clearly marked and that machine is—when one is listening to this machine, one presses the center button of these three buttons right here to listen to that machine. Now, Rose Mary Woods at Camp David, as she testified, was listening through ear-phones and they were very difficult for her to hear from. She had no foot control. She had to press this button, listen, and then when she wanted to stop she would stop with this button manually. Now, because she was experiencing such difficulty transcribing she wanted to make arrangement to have a machine upon which she could use a foot pedal to advance the tape and some provisions were made when she returned to Washington, D.C., to secure such a machine.

And the machine was secured for Miss Woods and it was the Uher 5000.

Now, the Uher 5000 as you can see from the photographs, and those of you who are close enough to see this machine, it has quite a different setup. Instead of a stop key being marked clearly "stop" the stop key is in the center. It is the center key. There are seven keys and the black key which is in the center is the stop key. Now, Rose Mary Woods had on this machine a foot pedal installed. Now, on this machine, I do not know if you can see it, but there is a foot pedal which is down below. This is the foot pedal. Now, not only is this obviously not the foot pedal which Rose Mary Woods had on October 1, but it is not the exact model. The exact model which Miss Woods used at that time was a "Fidelatap" foot model which had a bar across it. But, for purposes of this demonstration, it will be the same.

Now, the purpose of the foot pedal is to advance the tape. Now, when the foot pedal is depressed, the tape will advance. The foot pedal, when it is pressed, will advance the tape and one can hear the tape being played.

Now, the foot pedal operation alone cannot erase the tape. Now, the reason that the foot pedal alone cannot erase the tape is because the tape is erased by a head which is inside of the machine which is known as the erase head. There are two heads. There is an erase head which comes right after the record and playback head. Now, this is so when the tape passes the erase head it is cleaned and then the record head will put whatever is being recorded on, whatever magnetic signals are being recorded on the tape. This is when the tape is in the record mode, when it is set on record.

Now, all the foot pedal does is advance the tape. There is no way that this tape, the foot pedal can erase the tape because the foot pedal can neither energize nor deenergize, and the erase head can only erase when it is energized.

Now, the erase head is energized by pressing when the record button is pushed and this, starting from the left, is the fifth button over.

Mr. HOGAN. Is erase?

Mr. OLIPHANT. Is the record button. Now, when the record button is pushed, when this key is pressed down, the erase head and the record head are both energized. Now, when that is pressed down, both heads are energized. The record head is ready to record and the erase head is ready to erase.

Now, in order for this to take place, of course, the tape must be driven across the two heads. There are two ways that this can be done. It can be done by pushing the record button and the start button. The start button is the second button from the left. Now, if the record button is down, is depressed and the star button should accidentally be pushed, the machine will not record, because in order for it to record both buttons must be pushed simultaneously.

Now, however, if the record button is depressed and the foot pedal is depressed, the tape will begin and it will record and all the tape which is now passing through these two heads is now in the record mode and is being erased because in this machine the tape will be erased when the record is on and there is no microphone attached. In other words, if you wanted to record a verbal expression, if you wanted to record some other sound you would have to have a microphone attached. There is no internal microphone as there are in some of the smaller tape recorders that you might have. Therefore, that portion which you just erased is now gone.

Mr. DENNIS. Say that again, please? You say when you get the record down and the foot down together that erases it? Is that what you said?

Mr. OLIPHANT. That is correct. If there is no microphone.

Mr. COHEN. You have to keep the foot pedal depressed all of the time to make it go through?

Mr. OLIPHANT. In order for this machine to erase there are two functions that have to take place. One, the record head and the erase head must be energized. They can only be energized by pressing the record button. No. 2, you have to have tape being driven across these two heads. Now, the tape can be driven across the two heads two ways. It can be driven by pressing the start button and the record button together, or it can be—

Mr. BUTLER. Do they have to be held down or——

Mr. OLIPHANT. They have to be held down until they interlock in place.

Ms. HOLTZMAN. Can you just do that for us and show us?

Mr. OLIPHANT. Yes. Excuse me. There is the start button and the record button. There it is. They are both engaged.

Mr. FLOWERS. This is not a normal dictating machine? This is more for recording conversations I guess in a large room is that correct?

Mr. OLIPHANT. Well, it is a dictating machine also. There is a key here which is the second to the last key, which is called appropriately "Dicta" and if this is pressed with the microphone you can——

Mr. FLOWERS. You can operate it with a hand mike?

Mr. OLIPHANT. Yes.

Mr. FLOWERS. On a start, stop, and forward deal?

Mr. RANGEL. Let me ask a question. When you said that the start button and the record button must be pushed at the same time in order to erase, that is one way?

Mr. OLIPHANT. That is correct.

Mr. RANGEL. Now, the second way you said the record button pushed down and the foot pedal on advance could erase?

Mr. OLIPHANT. That is correct.

Mr. RANGEL. Must that second way be done at the same time? Could you push the record and then at a later time push the foot pedal?

Mr. OLIPHANT. Yes, you could. Yes, you could. I thought we demonstrated that. You see now if you push the record—I don't know if you can see but the heads are not moving at all. But, if the foot pedal is depressed, then they will start to move and then you can pull it over.

Mr. HOGAN. So in other words, with Rose Mary Woods, if the phone rang and Rose Mary Woods thought she was pushing on the stop button and hit the one right next to it and her foot was on the button on the floor it would erase?

Mr. OLIPHANT. That is correct. That is correct.

Mr. MANN. If it was held on there.

Mr. OLIPHANT. That is correct.

Mr. BROOKS. For 18½ minutes?

Mr. OLIPHANT. I wanted to show you this because now there is an important——

Mr. OWENS. Just one question. You had difficulty in engaging the record button and the start button at the same time. Is that usual?

Mr. OLIPHANT. Well, no it is not.

Mr. OWENS. Is it usually that difficult to make it work?

Mr. OLIPHANT. No, it is usually not.

Mr. RANGEL. One question.

Mr. FISH. Can I ask you a question, Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Is that the only way material on the tape can be erased, or is there another way?

Mr. OLIPHANT. It can be erased in rewind also. You can, for example, put it in the record and put the machine in the rewind mode and you can erase that way also but to answer that question now,

that was not done on this tape because the tape usually goes in a mode of 60 cycles per second and when it is erased in rewind, rewind is considerably faster, 500 cycles, and so for this reason you can hear a while and you can see different electrical signals that the experts could have determined. They found no electrical or wave forms which would explain any evidence whatsoever that there had been any erasures in the rewind mode.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Just a point of clarification. Can you push either button or the foot pedal to achieve the erase effect as long as the record button is on?

Mr. OLIPHANT. Yes; that is correct.

Ms. HOLTZMAN. Either one?

Mr. OLIPHANT. Yes.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. When the phone would theoretically ring, why would she push any button? Why wouldn't she just take her foot off?

Mr. OLIPHANT. Congressman Edwards, I have no idea.

Mr. EDWARDS. What would the normal procedure be, just to lift your foot and answer the phone?

Mr. OLIPHANT. It would appear to me that if you were listening, you can listen with just your foot down and then stop this way.

Mr. EDWARDS. There would be no reason then to reach over and push any button at all?

Mr. OLIPHANT. There might not be any reason.

Mr. EDWARDS. What reason could you possibly think of?

Mr. OLIPHANT. Well, this was the first time that Rose Mary Woods had used this machine and that is one reason I did point out in the beginning the stop button here and perhaps when you see—you see she was using this machine before and she always did have to push a stop button when she stopped.

Mr. EDWARDS. How long had she been listening to this tape before—

Mr. OLIPHANT. According to her testimony she had only been working on this tape for 2 or 2½ hours with this new recorder.

Mr. EDWARDS. Did the phone ring before?

Mr. OLIPHANT. I have no idea.

Mr. EDWARDS. Did anybody ask her that?

Mr. OLIPHANT. Not that I know of, Mr. Edwards.

Mr. EDWARDS. Do we know the answer to that question? Had the phone rung before? Had she stopped?

Mr. DOAR. I don't know the answer.

Mr. OLIPHANT. I do not believe that she was ever asked that question, Congressman.

Mr. EDWARDS. It is hard to believe anybody would listen for 2½ hours with the foot down.

I yield to Ms. Holtzman.

The CHAIRMAN. I think there are probably lots of answers to lots of questions and the manual that we have—

Mr. FLOWERS. How do you back it up?

Mr. OLIPHANT. You can back it up several ways. You can back it

up by pushing the rewind, which is this right here or you can back it up by pressing the rewind right here. This will move it forward, of course, and this will move it up.

Mr. BROOKS. Can you get one on your equipment allowance?

Mr. SARBANES. How do you back it up when it is a bar instead of two buttons which I gather was the case with the machine that was actually used?

Mr. OLIPHANT. Congressman Sarbanes, I do not know. I suppose you push it on this side and there is a lever that you press down. I am not familiar with the bar.

The CHAIRMAN. Why don't we address the Chair so that there will not be six questions asked.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, just one question. There is no way that she can press that foot pedal and that it will lock and so it will continually run so she does not have to have any weight on that pedal at all?

Mr. OLIPHANT. There is no way that I see right here and I understand from the engineer that there is no way to lock it.

Mr. MEZVINSKY. So she has to have weight on the pedal at all times in order for the tape to move through the mechanism; is that right?

Mr. OLIPHANT. Yes. Yes.

Now, as you read the report one thing will become very clear. There is one important principle which you have to grasp. One of the phenomena that takes place when recording activity takes place on a tape is that magnetic patterns are put on the tape. Now, these are distinctive and through testing they can be developed and they can distinguish various electronic markings, magnetic marks. Now, when the machine is turned on, the record head makes a very distinctive mark. When the machine is turned off it makes a distinct mark. In other words, when it is stopped after a recording mode, the erase head and the record head makes a very distinctive signature.

Now, the record head can only make a signature when it is deenergized. That is the only way that it can make a signature that you can see on the tape. Now, it becomes deenergized by having one of these, by having the stop button pushed, any button which will take it out of the recording mode, if it is in the recording mode.

Mr. DANIELSON. You don't have your foot on the foot pedal. You don't have the foot pedal actuated.

Mr. OLIPHANT. If it is in the recording mode any one of the other buttons pushed will take it out of the record mode.

Mr. RAILSBACK. No wonder Rose Mary had trouble.

Mr. DANIELSON. Try the foot pedal.

Mr. McCLORY. May I ask a question?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Would you tell me this, when you erase do you also get a buzz, or are we talking about two operations here if we get a buzz, one in erasure and two, a buzz or a hum or whatever?

Mr. OLIPHANT. The hum is a different phenomenon. There are various reasons that have been advanced for why there would be a hum. But, the hum is distinctive from the erasure.

Mr. McCLODY. The hum would not appear at the same time as the erasure?

Mr. OLIPHANT. No; the hum would be placed on at the same time.

What caused the hum is still a certain matter of discussion. The expert panel believes that the hum was caused by disturbances which were in the power line. The Stanford Research Institute, which is the organization which employed Dr. Hecker, who the White House employed, believes the buzz was placed on because of a problem within the machine itself.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Can I ask this? As I understand it, the conclusion of the report is that the buzz and the erasures were charged simultaneous but were done in five different—

Mr. OLIPHANT. Five contiguous operations.

Mr. RAILSBACK. Separate and contiguous segments and you can measure that by the magnetic marks?

Mr. OLIPHANT. Yes, Mr. Railsback. What the experts concluded was that each one of these, for each segment of erasure there is a distinct set of signatures signifying the erase head turning off and the record head turning off and the record head turning on. Now, the reason that they say that they are contiguous as opposed to consecutive is that the usual mode of erasing would be to play the tapes forward in the record mode here and erase a certain segment and then to conceivably back up to see where you left off, and then to continue forward again.

Now, as you back up over one of the segments where you were before, you will of necessity erase some of the signatures which were left by prior erasures. However, they can state unequivocally that there are five areas where they can see five contiguous segments that are lined up next to each other which were all erased. They can see that evidence of four other areas where they see part of the signatures but not a complete set. Their conclusion is that there are signatures which were left over from a prior erasure.

Mr. RAILSBACK. Mr. Doar, has this now been turned over for further investigation by the grand jury? In other words, the report and it is expected that they will come to some conclusions concerning a possible criminal violation?

Mr. DOAR. They still have the matter under investigation.

Tim, would you explain where the 5 or the 18½ minutes are? I mean with respect to time?

Mr. OLIPHANT. If you will turn, there is a table, table 1, and it is on page 25 of your report, and you can see where the five segments are. Perhaps you probably later would want to study this at your leisure but there are five segments and the segments and their time lengths are set out underneath at the bottom. It is the bottom line on this chart. The portion that you see at the right is the speech. This is original speech as originally recorded and through tests which the experts administered they could tell that the speech on this portion was recorded on the Sony 800B machine. At the end you see speech again and again the experts can determine that this speech is recorded on the Sony 800B machine.

In between, this dotted area here is buzz area, 18½-minutes gap, 1,110 seconds. There are five segments which are underneath. These

are the 5 minutes which the panel can commit themselves to so there were five segments and each of these segments required a separate erasure, a separate starting of the machine, separate stopping of the machine.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Counsel, this may have occurred to everybody, but me, and I apologize for that. The 18½ minutes is a total segment we are talking about?

Mr. OLIPHANT. That is correct.

Mr. WIGGINS. Was that entire section erased five times or was it broken into individual segments which were only erased once?

Mr. OLIPHANT. Mr. Wiggins, there is no telling how many times this segment was erased. In other words, how many separate operations took place on that segment. The experts can say that they can commit themselves, that they can see evidence that there were five, at least five different operations which took place.

Mr. WIGGINS. But they were consecutive and not five at the same time span on the tape is that correct?

Mr. OLIPHANT. Well, they are contiguous. In other words, they lie next to each other.

Mr. WIGGINS. What does that mean?

Mr. OLIPHANT. The difference between contiguous and consecutive, if they were done consecutively, well, it would be 48 seconds was erased, and then say 10 minutes in a chronological order.

Mr. WIGGINS. Yes.

Mr. OLIPHANT. What happened, according to the experts, they could commit themselves to saying that a person would erase, right, and we might go along for let us say 5 minutes and he might stop. Then he might rewind back, let us say 1 minute, to find out where he was. Then he might put the machine in a record mode again and go forward until he found sound again, you see.

Mr. WIGGINS. I see.

Mr. OLIPHANT. So that as he comes back and starts again he will create a new segment.

Mr. WIGGINS. That is just an overlap section?

Mr. OLIPHANT. That is correct. That is correct. So that there will be five different operations. Now, when they were done, if they were done consecutively while they were done the experts could not say and that is why they say they see evidence of five segments.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. My question is directed to the recording of the tape originally. This recording device was activated by voices?

Mr. OLIPHANT. Yes. It was operated by a device called a Vox, which was in the Executive Office Building, in the Executive Office and also in the Oval Office, and it was known as a sound activated machine. It would work when a certain sound level was reached and then it would signal the machine to start recording.

Mr. BUTLER. Well now that is my question. With reference to the 18½ minutes, this is 18½ minutes of operating at the usual speed that it would take 18½ minutes to record this conversation?

Mr. OLIPHANT. That is correct.

Mr. BUTLER. But it does not necessarily mean that 18½ minutes transpired between the last speech ended and the next, the next speech shown on this thing again, unless there was some activity during all of that period; is that correct?

Mr. OLIPHANT. Well, that is correct as a general principal except in this particular case you have conversation of Mr. Haldeman, and the experts were permitted to listen to a portion of a recorded speech before the gap and a recorded portion of the speech after the gap and they were able to hear the President and Mr. Haldeman's conversation and the 18½ minutes of buzz and then after the buzz they were able to hear the further conversation of the President and Mr. Haldeman. Whether that took exactly 18½ minutes to record or not—

Mr. BUTLER. All we know is a rough idea of what all was transpiring beforehand and what was transpiring afterward, and approximately when it took place?

Mr. OLIPHANT. That is correct.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I have two clarifying questions. First, assuming that Rose Mary Woods put her foot on the foot pedal and had the record button on and the telephone rang would that telephone ring be recorded on the machine as it was recording?

Mr. OLIPHANT. No, it would not because this machine will not record unless there is a microphone attached to it and she was just using this machine for the purpose of listening.

Ms. HOLTZMAN. The second question is it says here in the summary of events that the record head was on and then the record head was off and then the record head was on. Does that mean that the record button was first pushed down according to the experts and then another button was pushed to put that record button in an up position and then the record button was pushed down again?

Mr. OLIPHANT. What it means is that whenever you see a "record on" mark it means that the record button was pushed. That would just make one mark. And then there will be a "record off" mark and an "erase head off" mark for each segment there will be three marks. "record head on" mark and an "erase head off" mark and a "record head off" mark.

Ms. HOLTZMAN. Maybe I did not make my question clear. In order to have that event occur did you have to push another button to get the record button into an up position, or could this event simply occur by use of the foot pedal and the record button?

Mr. OLIPHANT. The record button with the foot pedal, and the record button has to be pressed in order to have that done.

Mr. HOGAN. I think what she is saying is if the record button were down and you took your foot off the foot pedal would you get the same thing on the table?

Mr. OLIPHANT. No, you would not.

Mr. HOGAN. As if you did it by hand? You have to push the button by hand?

Mr. OLIPHANT. You have to push the button by hand to get a record mark. You have to have the record button on. Once you have the record mark on you will have one record button mark for every time

that it is pushed on. If it stops and starts again you would not get the record mark.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Would the experts have been able to possibly reconstruct the signs on the tape if there had not been a buzz or hum superimposed?

Mr. OLIPHANT. No, I do not believe so because the erasing capabilities of the Uher 5000 of the head here, are very strong. In addition to that the low speed of the tape recorder pushing the tape past this very effective erase head would probably effectively have erased all sound that was on it.

There is one point that I should add. The experts also determine a mark which is explained in the record known as the K-1 pulse and the K-1, there is a switch inside the machine, an internal switch which you cannot see which is only activated by pressing these keys, these keys here which are the only keys which can activate the K-1 pulse. And the experts determined that you can usually only determine the K-1 pulse when the start key is pressed, and the experts were able to find six K-1 pulses, identified six K-1 pulses on the evidence tape which was the actual tape which was recorded on June 20 and therefore, they can definitely conclude that there was a hand operation of this.

I would state also that Dr. Hecker of the Stanford Research Institute would not commit himself that there were six K-1 pulses but thought that there were a lower number.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Will the machine erase if the record button is depressed and then eventually the rewind button is depressed.

Mr. OLIPHANT. Yes, sir.

Mr. WIGGINS. Is there a fast rewind on the machine?

Mr. OLIPHANT. Yes, there is.

Mr. WIGGINS. Will it erase faster in that event?

Mr. OLIPHANT. Yes; it will.

Mr. WIGGINS. I take it it would be possible to run through 18½ minutes of normal speed in something less than that if you erased by reversing the machine on the fast rewind?

Mr. OLIPHANT. That is exactly correct, Congressman. But, that would also set up an entirely different pattern of electronic signals, and the experts, in considering this alternative, this hypothesis that this could have happened, conducted extensive testing for this and were unable to find any evidence of this having happened.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. I wonder if counsel could tell us, was that second piece that you are demonstrating from purchased for Miss Woods or was it in the White House prior to her need for a new piece of equipment?

Mr. OLIPHANT. This particular Uher machine?

Mr. FISH. The one that she was using.

Mr. OLIPHANT. The one that she was using was purchased especially for her. There were apparently other Uher 5000's in the White House but when she made a request the Secret Service agents were unable to

find a Uher with a foot attachment so they went out and purchased one on that day, on October 1.

Mr. FISH. Do you know if anybody else in the White House staff was familiar with the operation of the type machine that she was using?

Mr. OLIPHANT. I have no idea. I would imagine that the Secret Service was since I believe they had a number of them.

Mr. FISH. Do you know if Mr. Bull was?

Mr. OLIPHANT. I don't know if he was; no. He was shown by the Secret Service when they brought the machine in, they showed him how to operate it.

Mr. FISH. There is no evidence that he was familiar with the operation of this type of a machine prior to that time?

Mr. OLIPHANT. No, sir.

Mr. FISH. Thank you.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Does the machine have a fast forward?

Mr. OLIPHANT. Yes, sir it does right here, the last button.

Mr. DANIELSON. Will it erase or record in the fast forward?

Mr. OLIPHANT. Yes, I believe it will.

Mr. DANIELSON. That would require pushing down both the record button and the fast forward at the same time?

Mr. OLIPHANT. That is correct.

Mr. DANIELSON. Is there a separate erase button or just record?

Mr. OLIPHANT. No, the record button is what does the erasing under normal circumstances. The erase head and the record head are both activated by the record button.

Mr. DANIELSON. And last, a while ago you were trying to make it move forward on record by pushing down the finger button, the piano type key button there but I note it would not work.

Mr. OLIPHANT. No, sir, the stop button was by mistake.

Mr. DANIELSON. I was thinking about when you were pushing down the record button if you have the foot pedal attached, does it not override those buttons, so you have to push the foot button down to advance the tape?

Mr. OLIPHANT. No, sir, it doesn't.

Excuse me. Perhaps I may have misled you. The engineer tells me that I may have misled you and it may not erase in fast forward. I apologize.

It would definitely get the signals from fast rewind and it may not erase in fast forward. Excuse me.

Mr. SARBANES. Does the machine, on the magnetic signals, show a different signal in terms of which procedure is used, in order to erase?

Mr. OLIPHANT. As opposed to?

Mr. SARBANES. As I understand it, there are two ways to erase. You press those two buttons simultaneously and that erases, or you press the button to the right of the stop button and push down the foot pedal and that erases.

Now, will that be a different signal depending on which technique is used for purposes of erasure?

Mr. OLIPHANT. It would not be a different signal because to end the erasure, you see, it is at the end of each segment that you get the distinctive signal. You have one record on which you could get by pressing this. However, if this is going forward then you release it and this will not put signals on the tape.

The foot pedal cannot put signals on the tape. And the erase signals on the tape and the reason for this is that the erase signals can only be put on when the heads are deenergized. This foot pedal has no capability to erase, to deenergize the erase head or the record head. Therefore, even though you went forward let us say and erased using this foot pedal, when you came to the end where you wanted to stop, the period that you had erased, you would have to manually release the record button by pressing one of these pedals or buttons right here so, therefore, you have to use one of these pedals during the erasure mode.

In other words, to finish the erasure you would have to press one of these pedals.

The CHAIRMAN. Will you make that clear again as to the five segments?

Mr. OLIPHANT. Certainly.

The CHAIRMAN. How it was concluded that those segments, those erasures, took place manually and not otherwise?

Mr. OLIPHANT. Certainly.

The experts, through studying these signature marks, and a battery of other tests which have been described and which corroborated their studies, could find that for each separate erasure, to make sure there is a complete erasure, you had to have a record head on one starting it, an erase head signature and a record head off signature—in other words, when the machine stopped. Now, to create the erased signature, this could only be created by deenergizing the heads. The deenergizing can only take place through manual operations of the stop button. And therefore, they found evidence of at least five segments.

The reason we say they are contiguous instead of consecutive is that we have five different erasures lined side by side, but we could not say which in point of time came first.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Would you direct yourself to the one reservation that the Stanford group brought up? They agreed in general with the conclusion, but they raised the possibility that the Uher 5000 could be electronically faulty and they said that the panel should allow at least for the possibility of internal malfunction of the machine.

Mr. OLIPHANT. That is correct.

Well, one reason for this is that during the testing of the machine, after the experts had the original machine, which Miss Woods had used, the machine failed after about 8 days of testing. During the time they had been testing it, they had been able to recreate the buzz on the tape. When the machine failed, they opened it up and they replaced a diode. After they replaced the diode, they were unable to duplicate the buzz on the machine. Therefore, the Stanford Research Institute, while stating in their report that they had tested all the alternate hypotheses to the erasure, as had the panel, and found none of them

could have, in their opinion, caused the erasure, and while they agreed with the methods the panel had used to do the testing, and while they agreed with the expertise of the panel and they could offer no other hypothesis, because there had been an internal malfunction, they were unwilling to rule out unequivocally that there could not be some other alternative to erasure.

MR. DRINAN. Did the other group give any answer to that possibility?

MR. OLIPHANT. They went through six potential ways that the erasure could have been caused and they excluded these. One reason that they excluded the malfunction theory was the presence of these K-1 pulses which can only be caused by when you press down one of these pedals, especially the start pedal, there is a mechanical function which takes place. There is a latching and unlatching that takes place. This could not be caused by some electronic malfunction of the machine. This would have to be done as a result of manually pushing it down.

MR. SEIBERLING. Will the gentleman yield?

MR. DENNIS. Mr. Chairman?

THE CHAIRMAN. Mr. Dennis.

MR. DENNIS. Thank you, Mr. Chairman.

May I inquire of counsel for one moment? I would like to run through this erasure process once more to make sure I understand it.

As I understand it first, you have to energize the record head and the erase head and you do that by pressing the record button. Is that right?

MR. OLIPHANT. That is correct.

MR. DENNIS. And second, the tape has got to be run by the erasure head, and you do that in one of two ways: either by pressing the stop and the record button together—

MR. OLIPHANT. That is correct—start and record buttons.

MR. DENNIS. Excuse me, the start and the record buttons together. Or by pressing the record button and putting down the foot pedal. Is that correct?

MR. OLIPHANT. That is absolutely correct.

MR. DENNIS. In the latter event, if you are doing it by pressing the record button and putting the foot pedal down, what is the situation with regard to the start button? Might it be down also?

MR. OLIPHANT. I do not think that you would use all three.

MR. DENNIS. But you would have used it when you started, and it might still be down, might it not, at that point? Is that logical or likely?

MR. OLIPHANT. Excuse me, Mr. Dennis.

The engineer informs me and he is obviously correct, if the start button is down, the tape would be running anyway. The start button performs the same function as this, so that the tape would be running anyway, it would not matter if you pressed down this, too.

MR. DENNIS. But it could happen that way, right?

MR. OLIPHANT. I suppose it could happen, but it would make no difference as far as—

MR. DENNIS. Some of them say not. I am just asking. I do not know. But I would like to know whether the start button could also be down at that time when you had the record button and the foot pedal down?

Mr. OLIPHANT. I suppose it could.

Mr. DENNIS. Now, if it were and you took your foot off the foot pedal, you would be back to No. 1 and you would have the start and record down and it would still erase, is that correct?

Mr. OLIPHANT. That is correct.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. OLIPHANT. It would not stop. It would still be recording. It would be going forward.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

We are going to conclude this phase of the discussion in 10 minutes. Mr. Rangel and a few others have some questions regarding the presentation, which I think are pertinent.

Mr. SEIBERLING. I just wondered if among the alternatives, the panel considered a sinister force.

Mr. OLIPHANT. I am sure they did.

Mr. DONOHUE. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. Please tell me: Do I understand that Rose Mary Woods was typing information that was coming off the tapes?

Mr. OLIPHANT. At this point, her testimony is that she had been typing and transcribing. She had come to the end of the portion that she believed she was responsible for. According to her testimony, she believed she was only responsible for typing that portion of the conversation which related to the President and Mr. Ehrlichman. So, therefore, she was listening to see if this was still taking place. She does not remember if she was typing a portion directly before the erasure or not.

Mr. DONOHUE. In other words, the tapes had been completely recorded and she was just getting information off the tapes?

Mr. OLIPHANT. That is correct.

Mr. DONOHUE. She would have earphones on, would she?

Mr. OLIPHANT. That is correct.

Mr. DONOHUE. Now, as I understand it, after she typed the information off the tape, she went back and she decided to, or in the course of it, she pressed some buttons and did it incorrectly and that caused the erasures? Is that correct?

Mr. OLIPHANT. Well, her story is that she was transcribing the tape and she is not completely sure exactly how she was transcribing it, whether she had a button down or whether she had the foot pedal down. The phone rang. She is not sure what she did, but she thinks what she must have done is press down the recording button, because when she turned back from the phone, she noticed that the record button was down. She remembered where she had last heard conversation on the tape. She rewound the tape, played it forward, and after she got to the last place that she remembered hearing conversation, she heard this buzz. She listened for 4½, 5 minutes on the buzz, she stopped the machine and went in and told the President that she had made a mistake.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. If I understand your presentation here, in order for that machine, the Uher 5000, to record, there must be a microphone attached?

Mr. OLIPHANT. That is correct.

Mr. DANIELSON. Was there any evidence as to whether Miss Woods was using a microphone? Was a microphone attached?

Mr. OLIPHANT. The evidence was that she was not using a microphone.

Mr. DANIELSON. The erased portions in the gap, do they bear electronic signatures indicating that there had been a recording of some kind going on there, that the recording head was energized?

Mr. OLIPHANT. Yes, definitely.

Mr. DANIELSON. Would those electronic markings appear if there were no microphone attached?

Mr. OLIPHANT. Well, there was no microphone attached; therefore, these markings showed that it was in the recording mode. There was no sound being recorded.

Mr. DANIELSON. A recording mode, but no sound.

Mr. OLIPHANT. That is correct.

Mr. DANIELSON. So the soundover, the new sound, if any, that appears on the tape would have to have come at a time when a microphone was attached?

Mr. OLIPHANT. No, that is not true. This new sound that came on, this buzz, came on as a result of this machine being played without a microphone attached. Now, why exactly the buzz came on is not known. Apparently, all Uher's create, have a tendency to create some sort of a buzz to different degrees when they are just played in a record mode without a microphone attached or without being plugged into a radio or something.

Mr. DANIELSON. In other words, the buzz sound that you find from a Uher 5000 being played in the record mode without a microphone attached is a normal characteristic, is that true?

Mr. OLIPHANT. Probably to a lesser degree than was found on this tape, but it is obviously an unnatural phenomenon, but it is explainable. It is not the usual thing which happens.

Mr. DANIELSON. Do you know whether with this machine in a record mode without a microphone, if you play over the same segment a number of times, more than one time—several times—does that increase the intensity of the buzz sound?

Mr. OLIPHANT. I do not know. I believe it does not.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Am I correct that a K-1 pulse reflects manual operation of the start switch and record switch rather than the foot switch—

Mr. OLIPHANT. That is correct—well, there are several switches which will activate a K-1 pulse. I believe the start, the rewind, and the record button will. But the start button is when, the experts say, they can most likely or have the best chance of recovering D-1 switches.

Mr. RAILSBACK. But the significant thing is that that kind of a pulse is not triggered by the foot mechanism.

Mr. OLIPHANT. Exactly. The significance of the K-1 pulse—

Mr. RAILSBACK. And there were six different K-1 pulses, as I understand it, later on in the 18½-minute gap?

Mr. OLIPHANT. That is absolutely correct. And the significance of that, as I said before, there is an internal switch that you cannot see here that is a K-1 switch. This is operated as a result of certain latching and unlatching which takes place. But this can only be activated as a result of pressure coming down on one of these switches. So it has to be done manually.

Mr. DONOHUE. Mr. Chairman, do I understand that Rose Mary Woods was not recording at the time that these erasures were made?

Mr. OLIPHANT. That is correct.

Mr. DONOHUE. She was transcribing what was on the tape.

Mr. OLIPHANT. That is absolutely correct, Mr. Congressman.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis, and this will conclude the portion of the presentation.

Mr. DENNIS. I thank the chairman and this is a concluding query.

I was just wondering, Mr. Chairman, in view of the highly difficult and technical nature of this testimony, which is important testimony, if it might not be possible, for the assistance of the committee, to have this gentleman's very instructive testimony transcribed so that we can have it to study. It would be helpful in connection with the report, I think.

The CHAIRMAN. I think we can make that available.

Mr. Rangel. I have agreed to recognize Mr. Rangel for sometime now.

Mr. RANGEL. I reserved my question on tab 81.1, [82.1]. I direct your attention to the second part of a statement made by Mr. St. Clair on February 14, 1974, at Key Biscayne. On page 215 of the Presidential document, Mr. St. Clair points out that the President believes that he has furnished sufficient evidence to determine whether probable cause exists that a crime had been committed, and if so, by whom.

On June 11, newspaper accounts indicate that Mr. St. Clair went to court after the President was named as an unindicted coconspirator and indicated that the evidence presented was that it is totally insufficient to support the actions taken and in fact contradicts the action.

Now, I am assuming that this is the same grand jury.

Mr. JENNER. Right.

Mr. RANGEL. Now, if that is so, the newspaper account indicates further that in the local pleading he filed with Judge Sirica yesterday, and this is the Washington Post of Wednesday, June 12, Mr. St. Clair said that he learned about some of the evidence while sitting in at the House Judiciary Committee Impeachment Inquiry and he said it included grand jury testimony by former White House people, who are named. He goes on further, and this is where I need clarification. It says:

St. Clair submitted sealed copies of the grand jury testimony to Judge Sirica and asked that they be sent to the Supreme Court. The secret grand jury testimony of the five witnesses that St. Clair singled out had been turned over to the House Judiciary Committee earlier this year in a packed briefcase that the grand jury had compiled for the impeachment inquiry.

It concludes by indicating that St. Clair had suggested that Judge Sirica send the grand jury documents to the Supreme Court under seal or whatever method Sirica deals proper.

Could you shed any light on that? Not the contradiction that they had enough evidence to indict other people and not the President, but the question of this grand jury testimony that we have been holding so sacred in this committee?

Mr. DOAR. I believe that Mr. St. Clair submitted in camera some of that grand jury testimony in connection with a motion that he made to Judge Sirica.

Mr. RANGEL. Well, I am concerned about the rules of confidentiality for certain materials that had been in the books presented to us as members. Are you indicating that this has been given to the court or copies have been made of this material? Or is this a public record which you can investigate, exactly what happened?

I do not know whether the newspaper accounts of June 12 are accurate.

Mr. DOAR. No; it is not public record. It is filed in camera with the court. I asked Mr. St. Clair about it and my understanding was that in connection with a motion that he made in camera, some reference was made to the grand jury material.

Mr. RANGEL. Well, was the material taken out of the book and presented to the judge, or was it photocopied and presented to the judge?

Mr. DOAR. Well, I do not know what method was used to bring it there.

Mr. RANGEL. How do we follow through on our rules of confidentiality as relates to people other than members of the committee?

Mr. DOAR. Well, we would have to inquire further about that.

Mr. RANGEL. Well, I ask the Chair as to whether or not it is possible to get an answer to the question.

The CHAIRMAN. Well, I do not believe that I am in a position to answer that question. I think that we are all bound by those rules of confidentiality and I do not think we can go beyond that. However, the material that was delivered to us came from that same court.

Mr. MAYNE. Will the gentleman yield?

The CHAIRMAN. Mr. Mayne.

Mr. RANGEL. Yes; I will yield.

Mr. MAYNE. I am still encouraged to hear the chairman say that we are bound by the rules of confidentiality, but I must say that after day after day after day has gone by in which the rules of confidentiality have been openly flouted by members of this committee and confidential information has been systematically leaked to the press, I am at a loss to understand how the gentleman from New York can express such concern about them. I am afraid the rules of confidentiality as a practical matter have been completely destroyed. They are no longer in existence as a practical effect.

Mr. RANGEL. Well, I would like to share in the shock that has been displayed by the gentleman, but I just do not believe that because one or two wrongdoers on the committee or staff have violated the rules, that you believe that this gives carte blanche to other people to violate these rules. While I continue to believe that the grand jury testimony

given to me cannot even be shared by my staff members, I hope you would agree with me that other people, especially not on the committee, should not be released from the commitment that most of us have been abiding by.

The CHAIRMAN. The Chair would like to state that regardless of breaches of the rules of confidentiality on the part of any individual or individuals, the committee is still bound by those rules. The committee has not determined otherwise.

I would like also for the member to reflect that while a good deal is made of the fact that there has been a breach and there have been some breaches, nonetheless, I think we have to recognize that the matter referred to was a leak of material which, unfortunately, did occur and the Chair has stated that this is to be deplored. But I think we are beating a dead horse. I think that all we had better do is try to adhere to those rules of confidentiality and recall that we are bound by them. I think we will do ourselves some good if we stop talking about how they are being breached and try to, instead, insist on having the rules adhered to.

Mr. RANGEL. Mr. Chairman, my question is really whether there is a breach. Testimony that we received for the impeachment inquiry can be used in the President's defense. I do not take any issue with that. I just want to know whether the Chair is ruling that because the source came from the court, any one of us in dealing with the court question, can take it out of the book, reproduce it, and file it with legal papers.

The CHAIRMAN. The Chair is really not in a position. I do not believe, to make that kind of determination except to restate that I think we are bound by the rules of confidentiality. There has been no waiver extended to anyone. The Chair just made a comment that the material did come from that very same court and there were, I believe, at the time some observation made by the court that there were going to be risks in delivering this material to the committee.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling, and then the Chair is going to recess.

Mr. SEIBERLING. I have one clarifying question which I patiently reserved in accordance with the chairman's instructions until the completion of the evidence. This relates to the point raised by Mr. Latta in connection with the distinction that the President has made between testimony and documents in his remark to Mr. Richardson just after he became, was sworn in as Attorney General. The question was raised whether he had told Mr. Cox of this distinction. I would like to ask the staff whether we have any indication that Mr. Richardson considered this to be a definitive statement by the President or a rule that he was bound by or whether it was merely a unilateral statement by the President and was so considered as such.

Mr. DOAR. Well, I do not know how the President considered it, but—

Mr. SEIBERLING. I am thinking about how Mr. Richardson considered it.

Mr. DOAR. Mr. Richardson did not communicate it to Mr. Cox.

MR. SEIBERLING. I know he did not communicate it, but do we have any evidence whether he considered this to be some rule that he was bound by or whether he merely considered it to be a statement of the President which may or may not have been, amounted to a condition at that time.

MR. DOAR. No, I do not think that he considered that it was a rule that he was bound by.

MR. SEIBERLING. I mean in our interviews with Mr. Richardson, have we any light on this question?

MR. JENNER. Mr. Seiberling—

MR. SEIBERLING. I asked Mr. Jenner about this earlier, so maybe he has had a chance to check it out.

MR. JENNER. I obtained at noontime the transcript that Mr. Doar and I prepared of our interview with Mr. Richardson.

I think I had better read this one.

The question was put to Mr. Richardson—this is the beginning of the interview.

Q. We could begin by asking about the assurances that you received from the President as to the availability of papers and documents to the Special Prosecutor and whether there was any discussion with the President about the third category of the Special Prosecutor's charter.

His response was:

Taking the last item first, I never had any discussions with the President about the terms of the Special Prosecutor charter until after questions arose primarily in connection with that clause. My recollection is that the clause was put into the charter very early by me or Will Hastings, counsel at HEW. I talked to Cox about it and there may have been some modifications. It is pretty clear to me that this clause was in the charter from the beginning.

Then he goes on without any question from us.

On the first part of your question, this brings up a conversation that I had with the President that I have not previously talked about. I recognized that the Special Prosecutor had to be able to challenge executive privilege. Cox was interested in this to the extent that he was inquiring whether this was going to be a problem. There was an evolving theory of executive privilege developing at the White House. Then came the President's statement of May 22.

Fred Buzhardt called my attention to the fact that this had a sentence stating that executive privilege would not be asserted as to testimony. He was very pleased about this. He always wanted to maximize disclosure. He did not draw a distinction between testimony and documents and other evidence.

The May 22 statement represented a liberalization of the previous White House position as to executive privilege. The early position was that if a witness would ask a question involving communication to the President, the witness would raise the question of executive privilege and then it would be referred to the White House counsel. The next to the last White House version was that it was up to the witness to raise the question. If the witness did not raise it, the White House counsel who was present at the interview—for example, the SSC situations—would not raise it and the questioning would then go on. If the witness did raise it, then the question would refer to White House counsel. That was the position as of May 22. Mr. Buzhardt had assured me that the prior process had been dropped and the witness would answer all questions. This represented a substantial liberalization of the policy.

I told Cox that the problem of executive privilege was not so serious—

That is, based on what he is now reciting.

The date of my swearing in, I saw for one of the few times the President. He touched on the point that the waiver of executive privilege as to testimony did not mean that there would be any such waiver as to documents. He ex-

hibited a pretty hard attitude. I was not aware until then that testimony meant testimony, period.

That is emphasis.

I did not react then. I just let it go. The only communications I had with the President concerning Watergate were my conversation at Camp David, the one conversation I just related, which occurred at my swearing in, one conversation where the President stated, "Now I can get rid of Cox," which occurred after the Agnew matter, and a phone conversation when the President was agitated over the Los Angeles Times story involving San Clemente.

Then my question: "Did you ever mention the President's statement to Mr. Cox?"

His answer was, "I don't think so. Cox from the outset was engaged in negotiations for the production of documents. He got quite a lot."

Then Mr. Doar and I—well, that is irrelevant. We interrupted at that time.

"I knew Cox was going to have to assert that he had to get documents from the White House. I did not think the President's attitude made any difference to Cox. I supported Cox from the outset. I just did not get into a discussion about that with the President or with Cox. I did have conversations with Cox when Cox said my optimism that there would be no problem about executive privilege was exaggerated in the light of the distinction being drawn"—later on—"between testimony and documents. I did not refer to my conversation with the President at that time."

And that is Mr. Richardson's, a transcript of Mr. Richardson's statement. When I say transcript, it was prepared by Mr. Doar and me.

Mr. SEIBERLING. Thank you.

The CHAIRMAN. Thank you very much and the committee stands recessed until 10 o'clock tomorrow morning.

[Whereupon, at 4:30 p.m., the committee recessed to reconvene at 10 a.m., Thursday, June 20, 1974.]



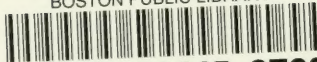
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